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Volume LXXIII

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The Righteous Teacher in the Pesherite Commentaries

Ben Zion Wacholder
Hebrew Union College - Jewish Institute of Religion

This paper reopens the century-old debate as to the identities of the Righteous Teacher and his nemesis, the Wicked Priest. Scholarship takes it as axiomatic that the Righteous Teacher was the founder of the Essene Movement that flourished in Khirbet Qumran and equally, that the enemy of this מורה צדק (or Righteous Teacher) known by various sobriquets such as the Scoffer, Liar and Wicked Priest was his contemporary. But, the scrollists can not agree on the identity of these allegedly historical personalities. Neither has anyone been able to document their existence in history.

In my opinion, however, the scrollists have misread these texts. I have contended that CD 1:11 ff. does not in fact claim what others allege, rather that the 390 years presaged had yet not elapsed at the time of this writing. This study deals with the passages in Pesher Habakkuk that relate the coming of the Righteous Teacher. Contrary to the entrenched opinion, what Pesher Habakkuk and other pesherite writings assert is that the Righteous Teacher will arrive at the End of Days. In other words, both the Righteous Teacher and the Wicked Priest are mythical personalities and recent scholarship concerning their identity is equally mythical.

I have previously argued that contrary to conventional opinion, the מורה צדק or Righteous Teacher is not a man of history, but an eschatological figure.[1] He is but another name for Elijah and the prophets who are said to presage the coming of the anointed, or millenial, age. The מורה צדק appears for the first time in the so-called Damascus Document, a work which I now refer to in its completeness by its original title, מדרש התורה האחרון (The Midrash on the Eschatological Torah or MTA).[2] My article in HUCA deals with the occurrences of sobriquets such as מורה צדק, יורה צדק (the Eschatological Righteous Guide) and דורש התורה (the Interpreter of the Torah) found in MTA. This essay expands the argument to other Dead Sea Scrolls (DSS) texts which contain the term מורה צדק and his nemesis variably called איש הכזב (the Liar), איש הלצון (the Scoffer) and כוהן הרשע (the Wicked Priest).

These two figures, the Righteous Teacher and the Wicked Priest, are not

1 Ben Zion Wacholder, "The Teacher of Righteousness is Alive, Awaiting the Messiah: האסף in CD as Allusion to the Siniatic and Damascene Covenants," *HUCA* 70–71 (1999–2000) 75–92.
2 Wacholder, *The New Damascus Document* (Leiden: Brill, forthcoming).

equally distributed among the DSS. Many texts clearly belonging to the sect make no mention of them. They are almost exclusively concentrated in the MTA, the so-called Florilegium and in the other pesherite *midrashim* such as Pesher Habakkuk, Pesher Isaiah, Pesher Micah and Pesher Nahum as well as in the Psalmic Pesher. What follows elaborates on these passages to show that these professional pesherite commentators by and large see the מורה צדק as a futuristic personality.

Many scholars take the pesherite texts to depict the biblical prophecies as elaborations of current events at the time of the composition of the *pesharim*. According to Nitzan, "the Pesherite Writers interpreted the visions of the prophets as allusions to specific historical events."[3] The task of the commentator according to her, therefore, is to show how the words of the prophet harmonized with such specific historical moments, reading the author's present into the biblical texts. A somewhat different view is taken by Rabinowitz and Brownlee. In his extensive commentary on Pesher Habakkuk, Brownlee[4] sees the pesherite commentaries as *midrash* where the words of the prophets, such as Habakkuk, Isaiah and others are amplified to presage the future of Israel. פשר הדבר (the prophetic event of this matter) thus denotes the prophetic fulfillment of what the prophet meant, predictions of which the prophet himself was not necessarily aware. Specifically, the pesherite text deals with two periods: the reality or events that have already been fulfilled, and those that are still imminent. Brownlee thus approves of Rabinowitz's statement, "The term pesher, in fine, never denotes just an explanation or exposition, but always a presaged reality, either envisaged or emergent or else observed as already actualized."[5]

As understood by Brownlee and other interpreters,[6] the pesherite commentaries attempt to prove that the teachings of the Righteous Teacher have become realized. Those that have not, will be fulfilled soon. In other words, as read by the scrollists, the words of the prophets have three stages: 1. authorship by the prophet; 2. interpretation of the prophet's words by the Righteous Teacher and misinterpretation by the Scoffer; and 3. imminent prophecies, those words that have not been fulfilled so far will be so presently.

The question arises, however, how does one distinguish between stages two and three? How does the modern interpreter know what is historical and has already been fulfilled at the time of the pesherite writer and what is still to be

3 Bilhah Nitzan, מגילת פשר חבקוק (Jerusalem: Bialik Institute, 1986) 29.

4 William H. Brownlee, *The Midrash Pesher of Habakkuk* (Missoula: Scholars Press, 1979).

5 Isaac Rabinowitz, "*Pesher/Pittaron*. Its Biblical Meaning and Its Significance in the Qumran Literature," *RevQ* 8 (1973) 225 f. Cited in Brownlee, *The Midrash Pesher*, 26.

6 Maurya P. Horgan, "Habakkuk Pesher (1QpHab)," in James H. Charlesworth, ed., *The Dead Sea Scrolls: Hebrew, Aramaic and Greek Texts with English Translations, Pesharim, Other Commentaries, and Related Documents* (Tubignen: Mohr Siebeck, 2002) vol. 6B.

awaited? In the commentaries of Brownlee, Nitzan, Horgan[7] and others, it is the modern commentators that decide in which stage each passage falls. Thus the instructions of the Just Teacher become subjected to modern historiography.

The basic problem with these interpretations rests with the fact that the allusions to contemporary events alleged by the commentators are always vague and non-specific. Two themes dominate the *pesharim*, especially Pesher Habakkuk: 1. the struggle between the Righteous Teacher and his opponent the Wicked Priest and 2. the invasion of the Holy Land by the כתיים (*Kittim*). As read by modern commentators, the *pesharim* refer to 1. these personalities and 2. to Pompey's invasion in 63 B.C.E. In fact, however, the accounts of these two historical figures lack any specific reference to history. Were these modern commentators right, it is inconceivable that these biblical commentaries would not have mentioned the historical figures to whom they refer. Generations of investigators have not been able even to identify them. In fact, Michael O. Wise concludes after a thorough investigation that, "Yet withal it is hard to escape the feeling that in seeking to identify the T[eacher] of R[ighteousness] with a known historical figure, named or unnamed, we are asking the sources a question for which they simply do not have the answer."[8]

What is true of the Righteous Teacher and the Wicked Priest applies as well to other attempts to contemporize the pesherite commentaries with the Maccabean Age. The pesherite commentaries make no reference to the Antiochan persecution, the victory of the Maccabees or the celebration of Hanukkah. Neither do they tell us of a single event that clearly refers to Pompey's conquest of the Near East. This has not prevented, of course, scholars from finding alleged allusions such as linking the hanging of the preachers of smooth things to Alexander Janneus and his persecution of the Pharisees.[9]

In my view פשרו or פשר הדבר may be rendered as "its messianic meaning is" and is always futuristic, never historical. Thus the pesherite genre diverges from rabbinic *midrash* in that unlike the later, which deals with diverse aspects of hermeneutics, the former consists of a singular theme, millenary messianism. For example, the Aramaic use of פשר in Daniel occurs thirty-four times, always giving the messianic sense of מנא מנא תקל ופרסין (Daniel 5:25). The use of פשר in Daniel might be thought to refer to the interpretation of dreams.[10] Linguistically one might argue that פשר in Daniel has the sense of the Hebrew

7 Maurya P. Horgan, *Pesharim: Qumran Interpretations of Biblical Books* (Washington, D.C.: Catholic Biblical Association of America, 1979).

8 Michael O. Wise, "The Teacher of Righteousness and the High Priest of the Intersacerdotium: Two Approaches," *RevQ* 14:56 (1990) 613.

9 Pesher Nachum, 4Q169 f3 4i:8f.

10 Nitzan, *Pesher Habakkuk*, 32.

word פתר or פתרון, interpreting or resolving dreams (Genesis 41:12). But it would seem that even in Daniel, the term פשר does not primarily refer to the message of the dreams. Suppose that the king's magicians would have interpreted Belshazzar's dream, it would still not be a פשר. It was Daniel's messianic interpretation that the words on the wall referred to the end of times, announcing the advent of the Messiah, which made his interpretation a *pesher*. What is crucial in the pesherite commentaries, therefore, is not the interpretation of the dreams, but their omens for the eschatological message.

This understanding sheds new light on the use of the term פשר. As scrollists take it, פשר is essentially a literary term that "contemporarize[s] biblical exegesis peculiar to Qumran."[11] Referring to Pesher Hosea, Bernstein describes the formula פשר or פשרו as formula that "relate the biblical text to both historical and eschatological events."[12] This rendition of the term פשר, I believe, misrepresents the real sense of the term. Let us not forget that the *pesharim* and related texts use the term פשר or פשרו some 175 times. What was the purpose of such constant reiteration? In Daniel, as in the DSS, each use of the term פשר serves to alert the reader that this is a uniquely inspired mode of exegesis. The large total of these terms accumulates to show no superfluity in the prophet's vision. Every clause was a singular inspiration. This reiteration has an analogy in the Aramaic chapters of Daniel, where chapter 2 uses פשר and its variants thirteen times, chapter 4 eight times, chapter 5 twelve times and chapter 7 once. As was indicated above, פשר in Daniel refers not just to interpretation of dreams. What makes the *pesher* a פשר in my opinion is its eschatological and messianic import inspired by God. Note also that in most instances, פשרו is followed by the preposition על and generally translated "its interpretation concerning." However, it should rather be rendered "its messianic meaning concerns or deals with." It is this sense that Daniel and the DSS *pesharim* never tire of repeating. The repetition of *pesher*, then, serves a special function – "לפשור" to presage as specified in 1QpHab 2:6–10.[13] It is interesting that לפשור is followed here by the clause "all the words of the prophets are messianic" את כול דברי עבדיו הנביאים confirming that they are not historical.

As to the question of the origin of פשר in the DSS, it appears that it may be ascribed to the author of CD 4:14 who employs it to interpret Isaiah 24:17. CD 4:12–18:

12 ובכל השנים האלה יהיה
13 בליעל משולח בישראל כאשר דבר אל ביד ישעיה הנביא בן
14 אמוץ לאמר פחד ופחת ופח עליך יושב הארץ. פשרו
15 שלושת מצודות בליעל אשר אמר עליהם לוי בן יעקב

11 Shani L. Berrin, "Pesher Nahum," in Lawrence Schiffman and James C. VanderKam, eds., *Encyclopedia of the Dead Sea Scrolls* (2 vols.; Oxford: Oxford Univ. Press, 2000) 2:653.

12 Moshe J. Bernstein, "Pesher Hosea," *Encyclopedia of the Dead Sea Scrolls*, 2:650.

13 See below for Hebrew and full analysis of this passage.

16 אשר הוא תפש בהם בישראל ויתנם פניהם לשלושת מיני
17 הצדק. הראשונה היא הזנות השנית (ההון)[14] השלישית
18 טמא המקדש.

> During all these years Belial *will* be set loose against Israel. As God foretold to Isaiah the prophet the son of Amotz, saying: "panic and pit and trap will be on you, dweller in the land" (Isa 24:17). Its messianic meaning concerns the three nets of Belial as Levi the son of Jacob prophesied upon you that he (Belial) will ensnare Israel and they will turn their faces toward three kinds of justice (i.e., injustice). The first is whoredom, the second is wealth (and) the third is profanation of the Sanctuary.

Note first that in introducing this passage, the author of MTA stresses that Belial's appearance to ensnare Israel is yet to come. Further, MTA attributes this comment to Levi who interpreted the words of Isaiah for the future. This interpretation was presumably present in the lost Hebrew version of the *Testaments of the Twelve Patriarchs* but absent in the surviving Greek version. In other words, according to the MTA, Levi was the first pesherite author. The attribution to Levi makes perhaps still another point, that the pesherite comments have a priestly root. At any rate, it is apparent that the composition of pesherite biblical commentaries was inspired by the author of the MTA.

What the author of Pesher Habakkuk tells us is that the usage of the technical marker פשר (whether it appears as פשרו על or as פשר הדבר or as פשר אשר) is necessarily futuristic. The authors of the *pesharim* may speak of the past or have allusions to contemporary events, but the main purpose of these accounts is not to enlighten the people with historical or current events, rather to predict the future. פשר then is a term to alert the reader that no matter what else is described in these commentaries and no matter how they may relate to past or contemporary events, their main purpose is apocalyptic, eschatological and messianic. This definition is embraced in the passage just cited (1QpHab 2:6–10). It is addressed to the righteous who, unlike the wicked, believe that past and present events are a prelude to the preeminent epoch of the Messiah. Hence, paraphrasers who routinely render the term פשר as "it refers to," "its interpretation" and the like present only its subsidiary sense.

Methodology

The pesherite commentaries, beginning with the Damascus Document, confront the modern reader with a linguistic challenge. Many of the descriptive verbs within these commentaries employ the perfect form, implying that these

14 The text has ההין.

events occurred in the author's past. Intermingled with these perfect terms are numerous verbs in the imperfect or the infinitive and are thus clearly futuristic. Still other verbs describe time using a ו which, given the fact that these texts do not employ vocalization, may be read as either futuristic in the imperfect (the ו החבור [the consecutive *vav*]) or past, using the perfect (the ו ההפוך [the conversive *vav*]). The tension between these two understandings becomes evident in the introductory lines of the part of MTA known as CD. Let us not forget that much of the pesherite texts draw on MTA. Thus, with the imperative verbs in lines 1 and 2 the author addresses his audience that he is about to reveal to them the acts of God. What are these acts of God? The text goes on to explain, "God has a quarrel with all flesh" כי ריב לו עם כל בשר and "he *will* execute judgement on those who have angered Him" ומשפט יעשה בכל מנאציו. The standard translations grant that the יעשה here is an imperfect and is futuristic,[15] however the next three lines have convinced modern writers that the author is really discussing the past. CD 1:3–6:

1:3 כי במועלם אשר עזבוהו הסתיר פניו מישראל וממקדשו
1:4 ויתנם לחרב ובזכרו ברית ראישונים השאיר שארית
1:5 לישראל ולוא נתנם לכלה ובקץ חרון שנים שלוש מאות
1:6 ותשעים לתיתו אותם ביד נבוכדנאצר

These lines allegedly imply that the author is referring to the past, especially regarding the text "since God hid his face from Israel and his sanctuary," referring to the Babylonian invasion in 597 B.C.E. and the destruction of the sanctuary in 586, events that antedate the composition of this work.

The controversial passage begins with line 4[16] ובזכרו ברית ראישונים, "remembering the covenant of the ancestors (i.e., the patriarchs)." השאיר שארית appears at first site to be perfect, "he has left a remnant." Here we see the tension, we just said that the יעשה, the execution of the judgement, will take place in the future while the remnant (if taken literally) has already occurred in the past. Interestingly, Rabin[17] cites two parallels in his footnote; Ezra 9:14, "Shall we once again violate Your commandments by intermarrying with these peoples who follow such abhorrent practices? Will You not rage against us

15 James H. Charlesworth, *The Dead Sea Scrolls: Hebrew, Aramaic and Greek Texts with English Translations* (Tubingen: J.C.B. Mohr, 1995) 2:13; Florentino Garcia Martinez and Eibert J.C. Tiglechaar, *The Dead Sea Scrolls Study Edition* (2 vols.; Leiden: Brill, 1997) 1:551; Chaim Rabin, *The Zadokite Documents* (Oxford: The Clarendon Press, 1958) B1.

16 The spelling of citations of CD in this paper follows that of the 4Q manuscripts when available. Thus, ראישונים is spelled with the י after the א as it is in 4Q268 1:12, not as in the Geniza text 1:4 ראשונים. See my forthcoming composite edition, *The New Damascus Document*.

17 Rabin, *Zadokite Documents*, 3.

till we are destroyed without remnant or survivor?"[18] and Enoch 83:8, "And now, my son, arise and make petition to the Lord of glory, since you are true, that a remnant may remain on the earth, and that he may not wipe out the whole earth."[19] Clearly, Ezra and Enoch understand the remnant as an event yet to come. This is likewise the sense here in CD, that השאיר means "he will have left" and indicates the entire theme of CD. MTA's main topic is time as repeatedly expressed throughout the work in the emphasis given to certain terms such as קץ, ראישונים, אחרונים, ואת אשר יבוא, ברית, מורה צדק and יורה צדק. God's retribution of the wicked has as yet not occurred but will take place in the future, at the end of the אחרונים and prior to the advent of the Messianic epoch. In other words, the event will be at the time of the Messianic age and Israel will have a remainder.

Let us pause here to say a word about methodology. To determine whether an event or fact given here refers to the past or the future, the verbal forms perfect, imperfect, the participle and imperative play an important but not exclusive role. Equally important are the general terminology and the context. Since the author of MTA links the covenant of the ancestors (ברית ראישונים) with the future covenant (ברית חדשה) and God remembered (פקד) Israel, then we have an assurance that God will remember again. The term ברית which occurs 79 times in MTA therefore could refer to the covenant of the early ones, the ברית ראישונים which sometimes refers to the past as in CD 3:10. However, in CD 1:4 and 6:2 when God remembers the covenant of the ancestors, the act of remembering is futuristic. Therefore, the verb השאיר refers not to the past and should not be translated as "he left a remnant," but as "he will have left," a futuristic past. Likewise פקדם in 1:7 should not be "he remembered them" in the past but "he will have remembered them" since no one can say that at the time of the writing the wicked of Israel will have been destroyed. We see the same clause in CD 6:2 which is also commonly rendered as historical but in my opinion ought to be taken as yet to come; reading the verbs ויזכר and ויקם as futuristic, reading ויקם not with a *pataḥ* under the *vav* and followed by two *kamatzim* (*vayaqom*), but with a *ševa* under the *vav* and a *segol* under the *quf* (*ve̓yaqem*) as does the medieval vocalizer of CD A.[20] Such an understanding resolves the puzzle of the מורה צדק and the יורה צדק who some scholars regard as two personalities (one of the past and one of the future), rather there is only one מורה צדק who is identical with יורה צדק, and it appears that he was

18 JPS.

19 Matthew Black in consultation with James C. Vanderkam, *The Book of Enoch or I Enoch: A New English Edition with Commentary and Textual Notes* (Leiden: Brill, 1985) 71.

20 For vocalization, see Elisha Qimron, "The Text of CDC" in Magen Broshi, ed., *The Damascus Document Reconsidered* (Jerusalem: The Israel Exploration Society, 1992) 11.

yet to come. This construction may be supported by CD 19:35 which lists two alternative readings of this one person, מורה or יורה.

Let us keep in mind that there exists a technical vocabulary that is uniquely common to MTA and the pesherite texts and does not appear in any of the extant DSS texts: דמשק, ראישונים ואחרונים, ברית חדשה, מורה צדק or יורה צדק, קץ הרשעה and קץ פקדה. Other phrases (בני צדוק) occur in MTA and satellite compositions such as the *pesher* texts and the Community Rule. What is common to this terminology is that most of them encompass a temporal dimension. More importantly and more significantly, they tend to be futuristic. Thus, the standard opinion that CD records past migrations to Damascus, which some scholars identify as Qumran, is mistaken since the migrations to Damascus refer not to historical movement, but to migrations which will occur in the future.

Reinterpreting the Rise of the *Moreh Tzedek*

Standard scholarship claims that the *Moreh Tzedek* founded the sect now known as the Essenes.[21] In this view, CD 1:5 ff. shows that the advent of the *Moreh Tzedek* was 390 years after Nebuchadnezzar's conquest of Jerusalem. According to this view, it naturally follows that CD was composed posterior to that 390 years. In addition, CD speaks of twenty years of blindness. It is important to remember that by general assumption, the Teacher of Righteousness was already dead at the time of composition, since forty years had passed since his demise. Thus 390 plus twenty plus forty is 450 years which when subtracted from 586 B.C.E. is 136 B.C.E. It follows that those who maintain this opinion set the composition of CD after 136 B.C.E.

However, as explained in my previous article, I argue that the *Moreh Tzedek* is not a historic personality but an apocalyptic figure presaging the arrival of the Messiah of Aaron and Israel. Thus the 390 years of CD had not yet fully elapsed at the time of the composition of MTA, a part, perhaps a significant part, was still to come. As to the claim that CD 20:13 reports the demise of the מורה צדק, this is a misunderstanding. As I take this passage,[22] the forty years ascribed to the term האסף do not announce the death of the *Moreh Tzedek*, but predict that forty years after the assembling (האסף) of the sect by the מורה צדק the Messiah will arrive. Indeed, the locution האסף appears in the Community Rule four times, all in the sense of assembly without a hint to death.[23]

A nearly century old literature exists in which prominent scholars searched the texts to find the identity of the alleged historical figures of the *Moreh Tzedek* and the Wicked Priest. The diversity of speculations produced by this scholar-

21 Devorah Dimant, "Pesharim, Qumran," *ABD* 5 (1992) 5:244–51. J. Murphy-O'Connor, "Teacher of Righteousness," *ABD* 5 (1992) 340–41.

22 Wacholder, "The Teacher of Righteousness is Alive."

23 Cf. 1QS 5:7, 10:1–3.

ship suggests that none of the proposed names given has any historical reality. The absence of the names is generally explained by the fact that it was an element of the DSS literary genre to substitute sobriquets for their real names. In fact, however, names are recorded such as the House of Absalom, the House of Peleg and Zadok. Pesher Nahum (4Q169 f3 4i:2) even records the names of the Selucid rulers Antiochus and Demetrius. Yet no one has explained the paradox that in this vast literary tradition which deals at great length with the activities dealing with these allegedly historical figures (who by general consent flourished during the middle of the second century B.C.E.) there exists neither any direct allusion to nor any echo of the Hasmonean Revolt nor the festival of Hanukkah. Some have ascribed the absence of any mention of the Maccabees to an intentional avoidance of naming due to their enmity to the Hasmoneans. Yet, these texts are full of depictions of the terrible Wicked Priest, the Scoffer and the Liar. Pesher Habakkuk even describes at length the pagan *Kittim*. The paramount challenge to all this literature is where (in these texts which devote so much space to figures from the second century B.C.E.) are the allusions to the momentous events connected with Hanukkah? As I see it, however, the DSS accounts of the *Moreh Tzedek* antedate the Hasmonean revolt. What they deal with is not what had occurred in the past, but the messianic epoch.

Before analyzing the pesherite texts, let me note briefly several passages of MTA which support this view that the Righteous Teacher and the Wicked Priest are futuristic personalities.

In CD 4:4, the author describes the Sons of Zadok who will be the priests in this messianic sanctuary העמדים באחרית הימים "that will arise at the end of days." In his pesherite *midrash* on the passage of the well, the futuristic sense of the מורה צדק, here called יורה הצדק, is clear. CD 6:8–11:

8 ונדיבי העם הם
9 הבאים לכרות את הבאר במחוקקות אשר חקק המחוקק
10 להתהלך בם בכל קץ הרשיע וזולתם לא ישיגו עד עמד
11 יורה הצדק באחרית הימים.

> And the nobles of the people are the ones who will come to excavate the well (Torah) with legislative mastery which the Lawgiver has etched so that they will walk by them during the entire epoch of wickedness; and those who are apart from them will not attain (understanding) until the True Lawgiver will arise at the end of days.

Some scholars have taken the term יורה הצדק to refer to another figure, not identical to the מורה צדק. Davies, for example, argues that the יורה הצדק and the דורש התורה could not be identical with the מורה צדק since the Righteous Teacher is a historical personality who founded the sect, whereas the יורה

הצדק is a futuristic figure.[24] That is precisely the point. Davies's understanding reflects desperate hermeneutics, since contrary to standard opinion, both passages are indeed messianic. The next passage appears in two versions, the first in CD 7:21–8:1:

7:21 אלה מלטו בקץ הפקודה הראשון והנסוגים הסגירו לחרב.

> These escaped during the epoch of the first remembrance and the slackers were handed over to the sword.

Having handed over the slackers in the perfect, or past tense, the other version of this passage in CD 19:10–11 is clearly in the imperfect and thus futuristic:

10 אלה ימלטו בקץ הפקודה והנשארים ימסרו לחרב בבוא משיח
11 אהרן וישראל.

> These *will* escape during the end of the remembrance and those who remain *will* be handed over to the sword when the Messiah of Aaron and Israel *will* come.

These two passages differ not only in wording, but in the role they play. In CD 7:21 it is the past epoch which is key in contrast to CD 19:10 where the focus is the Messianic era. It is apparent that an editorial hand altered one of these two texts. Which of these was the original and which was changed? Although both versions emanate from the Genizah in Cairo, it is apparent (as many scholars have pointed out)[25] that pages 19–20 reflect a version of an older text whereas 7–8 was subsequently edited.

The alteration seems to have been inspired by the fact that the Messiah had not come as yet. Hence, instead of predicting the coming of the *Moreh Tzedek* our text turns the futuristic figure into a personality of the past. Scholars have noted that although our Genizah texts were copied in about the tenth or eleventh century, the wording of these texts is generally very close to those that were preserved in the caves of Qumran. There are passages in CD, however, that were editorially altered, and this is one of them (CD 7/19). A medieval hand

24 Philip R. Davies, *The Damascus Covenant: An Interpretation of the 'Damascus Document,'* JSOT Sup 25 (Sheffield: JSOT Press, 1983) 123.

25 Cf. J. Carmignac, *Le Docteur de Justice et Jesus-Christ* (Paris: *Letouzey et Ané*, 1957). J. Carmignac, "Le Retour du Docteur de Justice a la fin des jours?" *RevQ* 1 (1958–59) 235–48. J. Carmignac, "Comparison entre les manuscripts 'A' et 'B' du Document de Damas," *RevQ* 2:5 (1959–60) 53–67. J. Carmignac, "Les elements historiques des 'Hymnes' de qumran," *RevQ* 2:6 (1960) 205–22.

altered the verbs from the future to the past. Therefore, the introductory line in CD 1:5–7 should somewhat be modified. As we have it now, CD 1:4–12 reads:

4 ובזכרו ברית ראישנים השאיר שאירית
5 לישראל ולא נתנם לכלה. ובקץ חרון שנים שלוש מאות
6 ותשעים לתיתו אותם ביד נבוכדנאצר מלך בבל
7 פקדם. ויצמח מישראל ומאהרון שורש מטעת לירוש
8 את ארצו ולדשן בטוב אדמתו. ויבינו בעוונם וידעו כי
9 אשימים המה. ויהיו כעורים וכימגששים דרך
10 שנים עשרים. ויבן אל אל מעשיהם כי בלב שלם דרשוהו
11 ויקם להם מורה צדק להדריכם בדרך לבו. ויודע
12 לדורות אחרונים את אשר עשה בדור אחרון בעדת בוגדים

> And when God remembered the covenant of the ancestors, He left a remnant in Israel and did not hand them over to complete destruction. And at the end of the epoch of anger, 390 years after handing them over to Nebuchadnezzar the King of Babylon, He has remembered them. And He will cause to sprout from Israel from Aaron a shoot of the planting to inherit His land and to fatten in the fertility of the land. And they will become aware of their sinfulness and they will know that they are guilty people. And they will be like the blind and those who grope for their way for 20 years. And God will know that they will have searched for Him wholeheartedly. And He will give rise for them a Righteous Teacher to guide them in the way of His own heart. And He will inform or tell to the eschatological generations what He had done in the last generation to the congregation of traitors.

This passage is crucial for those who argue that the Just Teacher is a figure of the past, but the text here is highly problematic. Parts of it are in the perfect like השאיר (he left a remnant), ולא נתנם (did not hand them over) and פקדם (he remembered them). On the other hand, other verbs are in the imperfect or can be understood to be in the future. Translators and interpreters since Schechter therefore have taken it for granted that all these futuristic verbs should be rendered as if they were in the past through the conversive vav. For example, ויצמח has been translated as "and He caused to grow"[26] or "and made

J. Carmignac and P. Guilbert,"Les textes de Qumran traduits et annotes," 1 (Paris: *Letouzey et An*[a], 1961). J. Murphy-O'Conner,"Demetrius I and the Teacher of Righteousness (1 Macc 10:24–45)," *RB* 83 (1976) 400–20.

26 Rabin, *Zadokite Documents*, 2.

bud"[27] and ויבינו has been translated as "they considered"[28] or "and they meditated over their sins"[29] and וידעו translated as "they knew."[30] These and related verbs, in my opinion, however, should be read as consecutive verbs, retaining their future sense. Which of these interpretations are right? A number of other verbs employ an infinitive form with a futuristic sense throughout. For example, לדשן does not say "and the land became fat" nor does להדריכם say "he guided them." Rather, they have a future context "to fatten the land (in the future when they inherit it)" and "to be a guide for them." There are some verbs whose form is clearly in the perfect, השאיר "he left a remnant" and פקדם "he remembered them." We get a better understanding of these verbs however, in the parallel passages (found above) of CD 7:19–8:1 and CD 19:10–11 in which two versions of the tradition have been transmitted, one as if it occurred in the past, the other unambiguously futuristic. In those texts, were not only the tenses transformed, but the two contexts were likewise altered. Moreover, much of the vocables in the two parallel texts are similar or identical to those in CD 1:4 ff.: שאר, נסג, קץ, פקד, ראש, ישראל, אהרן. Could it be then, that our text (CD 1) was likewise altered from the future to the past? This possibility, though attractive, should be rejected. The remains from 4Q266 and 4Q267 are highly fragmentary. Nevertheless, the remaining words attest to the antiquity of our passage here. They do consecutively use a mixture of perfects and imperfects.

In brief, the verbal forms in CD are a mixture of the perfect and imperfect and sometimes they can be vocalized to read either way, but certainly the futuristic format is dominant. There is therefore no reason to take it for granted (as scholars have) that the passages above relate that the Teacher of Righteousness and the Scoffer lived in the past. I believe that a reevaluation of the entire literature would show that the figures are futuristic.

The מורה צדק in the Pesherite *Midrashim*

So far, we have dealt with the occurrence of the מורה צדק in MTA, but the figure of the Righteous Teacher plays a prominent role in the pesherite commentaries. The DSS opened for us a new type of literature, the pesher *midrash*. Like the standard *midrash*, it exegetes biblical passages, giving them new insights. But, unlike rabbinic *midrash*, the commentary is regular in that the biblical verses are quoted and immediately followed by the technical term פשרו "its messianic meaning." We say messianic because all the texts that we have of

27 Solomon Schechter, *Fragments of a Zadokite Work* (Cambridge: Cambridge Univ. Press, 1910) 63.
28 Rabin, *Zadokite Documents*, 2.
29 Schecter, *Fragments of a Zadokite Work*, 63.
30 Rabin, *Zadokite Documents*, 2 and Schecter, *Fragments of a Zadokite Work*, 63.

this genre deal exclusively with the Messianic Age. Moreover, Louis Ginzberg argued, "The doctrine of a Messiah is not central in the theology of this document [CD]. The center of its theology is rather, as in Rabbanism, the Torah. It is even very doubtful that the sect attached as much importance to messianism as the Pharisees."[31] I believe that Ginzberg misread CD. We learn this from the various terms used for "messianic" which include: אחרית הימים, דור אחרון, and משיח, a term that occurs eight times in MTA. More important than the number of instances is that the messianic phrases mark the sect's future. What gives MTA its central theme is messianism. This is verified now by the newly published Qumran passages in 4Q266–273 where the figure of David reappears, for example 4Q266 4:10–13 "And God [will set up a unique shep]herd and will feed them in [a good pasture – my servant David, he will feed them] and [he] will become [their shepherd.] And he will select for himself [men of truth, fearing God and hating unjust gain. And they shall judge the people with righteousness and] compassion."[32]

As stated above the authors of the *pesharim* start with the premise that the biblical prophets wrote on two levels: 1. for their own time and 2. for the future. In fact, the prophets themselves were not aware how their words would be fulfilled in the future.[33] The פשר diverges from rabbinic *midrash* in another respect. Whereas the rabbinic *midrash* has selective verses and is rarely continuous, the pesherite *midrash* quotes the biblical text in full followed by a clause-by-clause interpretation that begins with the technical marker "פשרו" or "פשר הדבר."

Moreover, whereas the rabbinic *midrash* treats a variety of subjects, including textual analysis, the pesherite *midrash* has standard themes. Some pesherite *midrashim* have the Righteous Teacher and his Adversary as the main subject matter. Others, like the Pesher Habakkuk, have a subsidiary theme – the invasion of the Holy Land and ultimate defeat of the pagans, here called *Kittim*, and they too are the enemies of the Righteous Teacher. Still other pesherite texts, such as the Florilegium, consist of a pastige of passages all connected with messianism. Whatever their theme, all cluster around the technical marker פשר. Thus, we see that the belief in the coming of the Moreh inspired its own literary genre. Let us now see how these pesherite *midrashim* present the *Moreh Tzedek* and his nemesis. Are they presented as historical personalities as everyone supposes, or are they, as I argue, characteristically messianic? We find a clear statement in the Florilegium text 4Q174 f1–2i:11–13,

31 Louis Ginzberg, *An Unknown Jewish Sect* (New York: The Jewish Theological Seminary of America, 1976) 209.

32 Wacholder, *The New Damascus Document*.

33 1QpHab2:8–9.

11 [לעו]לם אני אהיה לוא לאב והוא יהיה לי לבן הואה צמח
דויד העומד עם דורש התורה אשר
12 [יעמוד]בצי[ון בא]חרית הימים כאשר כתוב והקימותי את
סוכת דויד הנופלת היאה סוכת
13 דויד הנופל[ת א]שר יעמוד להושיע את ישראל ⟦ ⟧

I will be a father to him (Israel) and he will be My son. This (passage presages) the shoot of David,[34] who together with the Interpreter of the Law will [arise] in Zi[on at the e]nd of days as it is written, I will reestablish the tent of David that had fallen. This is the falle[n] tent of David [t]hat will arise to save Israel.

The text "I will be a father to him . . ." concludes a lengthy quote and paraphrase of 1 Chronicles 17. The Chronicler quotes the visions of Nathan and David concerning the building of the Solomonic Temple. Florilegium transforms the Chronicler's allusion to the Solomonic Temple into a prophecy for the eschatological Sanctuary. The author of Florilegium welds this prophecy with CD's vision of the דורש התורה whom the author of Florilegium says will join with the shoot of David (i.e., the Messiah). Following this the Messiah of David and Israel will arise in Zion at the end of days. If there be any doubt of Florilegium's likely dependence on MTA, the quote from Amos 9:11, "And I will rebuild the fallen tent of David" is also in CD 7:16. Note that both the Florilegium (4Q174 1–2i:12) and CD (7:16), diverge from the Masoretic reading אקים into והקימותי in that both cite the Amos passage in connection with the Interpreter of the Torah. Contrary to most modern writers who take the דורש התורה as a personality of the past, Florilegium emphasizes its futuristic sense, "the one who will arise *together* with the shoot of David who will arise in Zi[on at the e]nd of days." In addition Florilegium interprets Amos as, "This is the falle[n] tent of David [t]hat *will* appear to save Israel." Thus these passages make it abundantly clear that the Interpreter of the Law, a synonym of the Righteous Teacher, is not only eschatological but messianic since he will join with the Shoot of David.

Let us now analyze the treatment of the two antagonistic personalities in the pesherite commentaries, מורה צדק and איש הכזב. I start with Pesher Habakkuk since it is the most extensive text that deals with this subject matter. 1QpHab 1:2–3:

[פשרו על ת]חלת דור [אחרון.

[Its messianic meaning concerns the beg]inning (others read "hope") of the [eschatological] generation.

34 Cf. Isa 11:1.

Whether one reads תוחלת (the hope) as others do, or תחלת (the beginning) as I do this first pesherite comment gives the theme of the book which deals with the messianic generation. The word דור is in the manuscript and אחרון is the standard reconstruction of the original reading. The reconstruction, as well as the meaning of the text, becomes clear from the parallel use of דור אחרון in 2:7 and 7:2. 1QpHab 1:16–2:10:

1:16 [-- ראו בגוים והביטו]
1:17 [והתמהו תמהו כיא פעל פועל בימיכם לוא תאמינו כיא]
2:1 יסופר.
2:1 [פשר הדבר על]הבוגדים עם איש
2:2 הכזב כי לוא [יאמינו אל דברי] מורה הצדקה מפיא
2:3 אל. ועל הבוג[דים בברית] החדשה כ[י]א [לו]א
2:4 האמינו בברית אל [ויחללו] את ש[ם]קודשו
2:5 וכן פשר הדבר[על הבו]גדים לאחרית
2:6 הימים. המה עריצ[י הבר]ית אשר לוא יאמינוא
2:7 בשומעם את כול הבא[ות ע]ל[ ]הדור האחרון מפי
2:8 הכוהן אשר נתן אל ב[לבו בינ]ה לפשור את כול
2:9 דברי עבדיו הנביאים[אשר]בידם ספר אל את
2:10 כול הבאות על עמו וע[דתו.

Look among the nations, observe well and be utterly astounded; for a work is being wrought in your days which you would not believe if it were told" (Habakkuk 1:5). [Its messianic meaning is that] the traitors who (join) with the Man of Lies for they will not [believe the words of the] Righteous Teacher (whose words came) from the mouth of God. And concerns also all those who have a[cted with treason against the] new [covenant] a[n]d have not believed in the covenant of God and they [have profaned] the holiness of the Lor[d]. And it concerns in addition [all the trai]tors at the end of time. These are the breecher[s of the coven]ant who will disbelieve when they will hear about all the ama[zing events th]at will occur during the eschatological generation, from the mouth of the Priest whom God endowed with [understand]ing to presage the words of all of his servants, the prophets [to whom] God foretold all of the astonishing events for his people and his con[gregation.

This is an interesting *pesher* since it not only ignores what is in the prophet's words, but appears to contradict it. Whereas Habakkuk stresses that these astonishing events will take place during the contemporary period (בימיכם in your days), the pesherite commentator insists on their futuristic sense. Note that this verse receives two pesherite passages introduced by the technical

term פשר הדבר. Then, the pesherite author goes on to define the meaning of the word פשר in lines 8–10. As mentioned above, although the technical marker פשר occurs 176 times in the DSS, its infinitive verbal form לפשור is found only here. The commentator uses the rare לפשור to stress the idea of lines 7–10, that the words of the prophets come from God, the prophet is only the instrument through whom God reveals the future. Therefore, from the use of פשר we learn that it is the futuristic sense that makes an interpretation pesherite. On the other hand, the בוגדים mentioned here three times have no trust in the pesherite hermeneutics, a point also made three times. The author's repeated insistence on the validity of the pesherite message reflects an attempt to convince that despite the prophet's insistence that his words were meant for his own time, the real meaning of the prophet is messianic for הדור האחרון, the last generation.

Bilha Nitzan[35] understands the phrase הדור האחרון as referring to the contemporary sense which in the horizon of the pesherite author is the end of time. But in my view, this is not what the *pesher* means by the eschatological generation. It clearly refers to that of the distant future, not a contemporary period. This is clearly shown by the next passage, 1QpHab 7:7–8:

7 פשרו אשר יארוך הקץ האחרון ויתר על כול
8 אשר דברו הנביאים כיא רזי אל להפלה.

> Its messianic meaning is that the epoch of the eschatological age *will* be long in coming[36] and it *will* be more meaningful over and above what the prophets had predicted, by the wonders of God.

In other words, the pesherite author takes Hab (2:3) to mean that the future is not going to take place immediately, now, but sometime subsequently when the wondrous acts of God will be even more miraculous than had been foreseen by the prophets. יארוך has here two senses: it is long in coming, and it is longer than anticipated. The former meaning of יארוך is clarified in the next pesherite comment, 1QpHab 6:12–7:5 on Hab 2:1–2:

6:16 [פשר הדב]ר א[שר]
7:1 וידבר אל אל חבקוק לכתוב את הבאות על
7:2 הדור האחרון ואת גמר הקץ לוא הודעו.

> [Its messianic mean]ing is that God told Habakkuk to inscribe all the

35 Nitzan, *Pesher Habakkuk*, 152–54.
36 Cf. Brownlee, *The Midrash Pesher of Habakkuk*, 114.

future events that will take place during the eschatological epoch, but He had not informed him (when) the end of the epoch will take place.

In other words, what the pesherite writer argues is that the Righteous Teacher, the Wicked Priest, as well as the *Kittim* who are the main figures of the commentary are neither figures of the past nor the present, but are still to come. The text then amplifies these ambiguous words:

7:3 ואשר אמר למען ירוץ הקורא בו
7:4 פשרו על מורה הצדק אשר הודיעו אל את
7:5 כול רזי דברי עבדיו הנבאים.

And what (Hab 2:1–2) says so that the reader will be fluent with it, its messianic meaning refers to the *Moreh Tzedek* to whom God made known all the mysteries of His prophetic servants.

According to the pesherite writer, God's words to Habakkuk (and presumably other prophets) were on two levels, on the surface appearing to be references to contemporary affairs but in fact they had a deeper sense of which the prophet was unaware, mysteries of the messianic age which became clear only in the messianic pesherite text. Therefore, it is the מורה צדק who will appear to depict the eschatological epoch, but has yet to come. Thus one sense of הדור האחרון indicates that the futuristic events will occur in two stages: first will be the Righteous Teacher who will appear in the eschatological generation; and second will be the Messianic Age, דור אחרון. Both the first and the second refer to a futuristic epoch – one which unlike putative scholarship has not yet arrived. It is the Righteous Teacher to whom God will have revealed all the mysteries intimated to the prophets. Certainly, these lines make no allusion to a historical figure who had founded the sect, but to a Elijah-type visionary.

This comment suggests that the author of Pesher Habakkuk picks from the material of MTA. In other words, I am taking this passage as a kind of successor to MTA. The focus of the דור אחרון (the eschatological generation) are the Righteous Teacher and the Man of the Lies. The eschatological generation here has the technical meaning as in the MTA and the Book of Jubilees, that history divides itself into three epochs, 1. ראישונים – the Era of the Ancestors, 2. אחרונים – the Apocalyptic Era, and 3. את אשר יבוא – the Messianic Age.

Thus far we have shown that Habakkuk's pesherite commentator explicates the prophet as futuristic, not only futuristic from the prophet's point of view, but also from the Righteous Teacher's viewpoint. The next passages cited from Pesher Habakkuk deal with the relationship between the Righteous Teacher and his opponent, the Wicked Priest. 1QpHab 1:10–11:

10 על כן תפוג תורה.,
11 [פשרו על מטיף הכזב ואנשי עדתו] אשר מאשו בתורת אל

"Therefore judgement will become corrupt" (Hab 1:4). [Its messianic meaning concerns the Lying Preacher and the men of his counsel] who have despised the Torah of God.

Here the Man of the Lies is the nemesis of the Teacher of Righteousness. The reconstruction here is doubtful, but for an understanding of the phrase אשר מאשו בתורת אל (those who have despised the Torah of God) we examine 1QpHab 5:8–12:

8 למה תביטו בוגדים ותחריש בבלע
9 רשע צדיק ממנו. פשרו על בית אבשלום
10 ואנשי עצתם אשר נדמו בתוכחת מורה הצדק
11 ולוא עזרוהו על איש הכזב אשר מאס את
12 התורה בתוך כול ע[דת]ם.

"How can you look on silently, you traitors, when the wicked destroys one more righteous than he" (Hab 1:13)? Its messianic meaning refers to the family of Absalom and the members of their party, who remained quiescent when the Teacher of Righteousness was being swallowed, and they did not assist him against the Man of the Lie, who had despised the Torah in the midst of their entire co[mpan]y.

To fully understand the sense of this verse, we need to bring in the entire biblical verse,

טהור עינים מראות רע והביט אל-עמל לא תוכל למה תביט
בוגדים תחריש בבלע רשע צדיק ממנו.

You who are not able to see evil and cannot pay attention to injustice, how can you look on silently, you traitors, when the wicked destroys one more righteous than he? (Hab 1:13)

The word נדמו "they keep quiet" is synonymous to תחריש which in context Nitzan[37] understands as "the people keep quiet when the wicked swallows one who is more righteous than he." This exegesis does not have a time element in it, though many scrollists have tried to identify a person or a party analogous to Absalom during the Second Temple Period.[38] However, there is no reason

37 Nitzan, *Pesher Habakkuk*, Introduction section 35, pp. 51–4.

38 There is a vast literature on the meaning of this difficult commentary on Hab 1:13, as there are several obscurities. Who exactly is the "house of Absalom," who are his counsel and what

that Absalom has a contemporary echo. Rather, one must suppose that the Wicked Priest typifies Absalom who plotted to destroy David who is alluded to here as the Righteous Teacher as exegeted in the text. Commenting that the wicked encircles the righteous, Pesher Habakkuk 1:13 (1QpHab 1:13 on Hab 1:4) continues to exegete:

[פשרו הרשע הוא הכוהן הרשע והצדיק] הוא מורה הצדק

[Its messianic meaning (concerns) the wicked who is to be identified as the Wicked Priest and the righteous] as the Just Teacher.

In other words, when the prophet says that the wicked encircles the righteous, this refers to the future generation when the Wicked Priest will besiege the Righteous Teacher as Absalom besieged David. 1QpHab 7:17–8:3:

7:17 [וצדיק באמונתו יחיה].
8:1 פשרו על כול עושי התורה בבית יהודה אשר
8:2 יצילם אל מבית המשפט בעבור עמלם ואמנתם
8:3 במורה הצדק.

["And the righteous will live by his faith" (Hab 2:4).] Its messianic meaning concerns all those who observe the Torah that the Lord will save them on account of their toil and their faith on behalf of the *Moreh Tzedek*.

What stands out in this passage is its messianic emphasis. Habakkuk uses the imperfect וצדיק באמונתו יחיה in a non-temporal sense, in other words the righteous lived and will live by faith. In the *pesher*, the אמנתם concerns not an abstraction, but their אמנה (faith) in the *Moreh Tzedek* and their עמל (labor) on his behalf. Further, it is the עושי התורה (those who observe the law) whose toil and faith in the Righteous Teacher will save them in the ultimate judgement of the world. Thus, the futuristic sense of these lines is unambiguous.

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is their role in this struggle between the Righteous Teacher and the Wicked Priest? As to the house of Absalom, cf. 4Q169 f3 4iv:1 and CD 20:22 the "house of Peleg." Just as the house of Peleg refers to a divisive group, the house of Absalom means a treacherous group with Absalom standing for the proverbial traitor. Again, the question arises for us whether this is a group of the past or an eschatological group. Some scholars, trying to show its reality in history, have linked it to the Sanhedrin or the Hasmonean rulers (Brownlee, *The Midrash Pesher of Habakkuk*, 92–93 who cites Dupont-Sommer and others). As I see it, it is a generalization; the name Absalom here serves no other purpose than to characterize the Wicked Teacher as a traitor and does not refer to the historical son of David. At any rate, the usage of figures such as Peleg and Absalom rather than historical personalities suggests a prediction for the eschatological epoch.

The passage that follows is more ambiguous and may be argued to show the opposite conclusion, that Pesher Habakkuk is essentially historical or contemporary. 1QpHab 8:3–13:

3 ואף כיא הון יבגוד גבר יהיר ולוא
4 ינוה אשר הרחיב כשאול נפשו ו[ה]וא כמות לוא ישבע.
5 ויאספו אלו כול הגוים ויקבצו אלו כול העמים.
6 הלוא כולם משל עליו ישאו ומליצי חידות לו
7 ויומרו הוי המרבה ולוא לו עד מתי יכביד עלו
8 עבטט. פשרו על הכוהן הרשע אשר
9 נקרא על שם האמת בתחלת עומדו וכאשר משל
10 בישראל רם לבו ויעזוב את אל ו[י]בגוד בחוקים בעבור
11 הון. ויגזול ויקבוץ הון אנשי חמס אשר מרדו באל
12 והון עמים לקח לוסיף עליו עון אשמה ודרכי
13 ת[וע]בות פעל בכול נדת טמאה.

"Indeed wine betrays a person, it makes him vain and he will not abide, who regarded himself as big as Sheol, but he as a mortal will not be sated. All the nations will gather against him and all the peoples will assemble towards him. All of them will take him as an example and will taunt him with sayings, and they will say, 'Woe unto him who gathers wealth that does not belong to him. How long will he burden himself with thick mud'" (Hab 2:5–6)? Its messianic meaning concerns the Wicked Priest who has been called as devoted to the True God at the beginning of his rise but when he rules Israel he will become haughty and he will forsake God and he w[il]l become treacherous on account of his passion for wealth. He will rob and gather possessions belonging to men of violence who will have rebelled against God. And the property of the peoples he will take to amass sin, guilt and abo[min]able acts, laboring with all kinds of defilement.

Although the verbs in Hab 2:5–6 are essentially in the imperfect, the verbs of the *pesher* employ mostly the perfect, a fact that has inspired scrollists to search for the personality behind this passage. Although many known figures of the Hasmonean period have been proposed, there is no dominant opinion as to his identification. Virtually all of these names have been taken to be part of the Hasmonean High Priesthood in a text that could hardly be referring to the Hasmonean Princes. After all, Pesher Habakkuk lacks any overt reference to the Hasmoneans. Moreover, the mention of אנשי חמס and עמים could hardly be considered apt references to the Selucids. See how the author of this *pesher* describes the *Kittim* who are generally assumed to refer to the Romans, but אנשי חמס and עמים could refer to any pagan nation. In other words, the fact

that the hermeneutics here use the formula פשרו על implies, I believe, that this text too is futuristic. As stressed by the commentators, the Wicked Teacher underwent a revolution. At the beginning of his rise he was called faithful, but when he became vain the text shifts to the imperfect with consecutive *vavs*. 1QpHab 10:14–11:2:

10:14 כיא תמלא הארץ לדעת את כבוד יהוה כמים
10:15 יכסו על הים[-- .]⟦ ⟧ פשר הדבר [אשר]
10:16 בשובם [--]לן[--]
10:17
11:1 הכזב ואחר תגלה להם הדעת כמי
11:2 היים לרב.

"The earth will be full of the knowledge of the Lord's glory as the waters that fill the sea" (Hab 2:14). [. . .] [. . . .]. Its messianic interpretation refers to [the matter which] when they repent [. . .]
[. . .]
the Lies, and afterwards true knowledge will be revealed to them, like the abundance of waters that fill the sea.

A large part of this text has perished which some scrollists reconstruct.[39] Most commentators, however, leave lines 16 and 17 blank. What is clear is that this text is futuristic. Both Habakkuk and the pesherite commentator have future forms of verbs; Habakkuk has תמלא and יכסו while the *pesher* has תגלה. These futuristic verbs, however, have not deterred scrollists from speculating on the historical personality involved in this passage. 1QpHab 11:2–8:

2 הוי משקה רעיהו מספח
3 חמתו אף שכר למען הבט אל מועדיהם.
4 ⟦ ⟧ פשרו על הכוהן הרשע אשר
5 רדף אחר מורה הצדק לבלעו בכעס
6 חמתו אבית גלותו. ובקץ מועד מנוחת
7 יום הכפורים הופע אליהם לבלעם
8 ולכשילם ביום צום שבת מנוחתם.

"Woe unto him who makes his friend drunk, pouring out his anger, or even making him drink so that he would gloat at their festivals" (Hab 2:15). [. . . .] Its messianic meaning concerns the Wicked Priest who pursues the Righteous Teacher to swallow him with his passionate anger at his place of exile. During the festival of rest, the Day of Atonement, he (the

39 Cf. Brownlee, *The Midrash Pesher of Habakkuk*, 174–78.

Wicked Priest) has appeared to consume them and to make them stumble during the fast day his (the Righteous Teacher's) sabbath rest.

Unlike the previous *pesher*, this text employs perfect verbs, and scholars have searched to find a corresponding historical event. A crucial question is what exactly is the meaning of אבית גלותו? אבית is an Aramaicism for "at the house" or בבית and thus we ask when and where did the Wicked Priest allegedly appear "at his place of exile?" Commentators have devoted much effort to solve the location and time of this alleged historical event, without finding a solution. Moreover, reading this text as historical contradicts the bulk of the thesis that the conflict between the two figures is futuristic. Bernstein, summarizing the passages, states that,

> "In the later portion of the *pesher* (vi.12–end), after the conclusion of the section on the *Kittim*, the interpreter focuses on the eschaton ("the last days"; vii.7, 12), predicts that those who will fulfil the "law" [*torah*] will be rescued by God (viii.1–3), and exhorts them to maintain their faith in him."[40]

In my opinion, the entire Pesher Habakkuk is futuristic. Contradicting this view, scrollists have stressed the role of the *Kittim*, who are generally taken to be the Romans, therefore linking them with Pompey's conquest of the Near East. In my opinion, however, this view misconstrues the gist of the *pesher*. *Kittim* in Pesher Habakkuk does not refer to the Romans or to any other particular group. *Kittim* means "pagans," as it does in 1 Maccabees. Of course, those pagans are the Selucids. On the other hand, Pesher Habakkuk is not historical, it is eschatological and messianic and the important point as far as the *Kittim* are concerned is not their conquest, but their ultimate defeat in the Messianic Age. 1QpHab 11:17–12:6:

11:17 [כיא חמס לבנון יכסכה ושוד בהמות]
12:1 יחתה מדמי אדם וחמס ארץ קריה וכול יושבי בה.
12:2 פשר הדבר על הכוהן הרשע לשלם לו את
12:3 גמולו אשר גמל על אביונים כיא הלבנון הוא
12:4 עצת היחד והבהמות המה פתאי יהודה עושה
12:5 התורה. אשר ישופטנו אל לכלה
12:6 כאשר זמם לכלות אביונים.

> ["For the crimes perpetrated against Lebanon he will bury you, for the robbery of beasts,] he will smite you; because of murder and injustice in

40 Bernstein, "Pesher Habakkuk," *Encyclopedia of the Dead Sea Scrolls*, 2:650.

> the land, he will destroy the city and all who live in it" (Hab 2:17). Its messianic meaning concerns the Wicked Priest, that he will be paid back for what he did to the poor, for "Lebanon" refers to the council of the Yahad, and "beasts" refers to the simple-hearted of Judah who obey the Law. God will condemn him to utter destruction, just as he planned to destroy the poor.

This passage employs the perfect to describe the acts of the Wicked Priest, but uses the imperfect to depict his retribution. Taken at its face value, it could be argued that the Wicked Priest is contemporary of the author of the commentary. But, the retribution predicted in the text is yet to take place. In fact, it seems to me that the description of the haughtiness of the Wicked Priest is also futuristic. However, the author puts it as if describing a past event to make it real and in order to articulate his messianic message. Coming back to Hab 2:17 cited in this *pesher*, 1QpHab 12:6–10:

6 ואשר אמר מדמי
7 קריה וחמס ארץ פשרו הקריה היא ירושלם
8 אשר פעל בה הכוהן הרשע מעשי תועבות ויטמא את
9 מקדש אל. וחמס ארץ המה ערי יהודה אשר
10 גזל הון אביונים.

> "As he says on account of the blood of the city and the violence of the land" (Hab 2:17). Its messianic meaning is that "the city" is Jerusalem in which the Wicked Priest has performed his abominable deeds and (where) he will defile the Sanctuary of God. And "the violence of the land" refers to the cities of Judah wherein he has robbed the poor.

Nitzan[41] points to Janneus, as do other commentators, whose slaughter and pillage is recorded by Josephus. On the other hand, these lines are a selective paraphrase of Ezekiel which refers to the defilement of Jerusalem in Ezekiel 22:3, 4, 5, 10, 11, and 26. The priestly robbery (or חמס) is also found in verse 26. Ezekiel, of course, does not identify the priests who did the pillaging; in contrast, our *pesher* ascribes it to the Wicked Priest. The fact that no specific name is given to identify either the Wicked Priest nor the person whom he robbed is one more indication that the pesherite author is applying standard formulas to attack imaginary events of the future.

The last passages of Pesher Habakkuk (1QpHab 12:10-13:4 on Hab 2:18–20) do not directly treat the Righteous Teacher and Wicked Priest. Nevertheless, they are relevant to our discussion, since they kind of summarize the work as

41 Nitzan, *Pesher Habakkuk*, 104–6.

a whole. The biblical lines mock the worship of idols made of wood and stone. The pesherite author makes two notes: first, that the idols "will not save them at the time of judgement" לוא יצילום ביום המשפט; and second, that all those who worship idols, as well as the wicked, will be destroyed on the day of judgement. The idol worshippers refers to the gentiles and the wicked must refer to the Israelite opponents of the sect. Note the emphatic statement that this will occur on the day of judgement, not in the past. In a way, this last statement puts succinctly the events described in this commentary. This commentary is a *pesher* for the time to come, not of history.

The *pesher* on Psalm 37, 4Q171, is important for our discussion. What survives from this text is taken to depict events whence to come. Thus, fragment 1–2, column II reads (4Q171 f1 2ii:1–11):

הרף מאף ועזוב המה ואל
תחר אך להרע כיא מרעים יכרתו. פשרו על כול השבים
לתורה אשר לוא ימאנו לשוב מרעתם כיא כול הממרים
לשוב מעונם יכרתו. וקואי יהוה המה ירשו ארץ. פשרו
המה עדת בחירו עושי רצונו. ועוד מעט ואין רשע
ואתבוננה על מקומו ואיננו. פשרו על כול הרשעה לסוף
ארבעים השנה אשר יתמו ולוא ימצא בארץ כול איש
[ר]שע. וענוים ירשו ארץ והתענגו על רוב שלום. פשרו על
עדת האביונים אשר יקבלו את מועד התענית[42] ונצלו מכול פחי
בליעל ואחר יתענגו כול ב[נ]י הארץ והתדשנו בכול תענוג
בשר.

"Forsake anger, and abandon resentment, do not be an associate to do evil, for the evil will be cut off" (Ps 37:8–9). Its messianic meaning is that for all those who turn to the Torah who will not refuse to repent their evil, but all those who resist who reject repentance, will be cut off. "And those who trust in God will inherit the land" (37:9). Its messianic meaning is that is the chosen congregation who do God's will. "It will not be long before the wicked will be no longer, and I will look for his place and he will not be there" (37:10). Its messianic meaning is that all the evil will become extinct at the end of forty years and no wicked person will be found in the land. "But the humble will inherit the land and will feast with the abundance of peace" (37:11). Its messianic meaning is concerning the congregation of the humble who will adopt the festival of the fast and will be saved from all

42 Reading follows Garcia-Martinez and Tigchelaar, *The Dead Sea Scrolls Study Edition*, 1:342–44.; and Eduard Lohse, *Die Text Aus Qumran* (Einband: Kosel, Kempten, 1971) 272–74.

> the snares of Belial. And afterwards, the in[hab]itants of the earth will feast and will fatten with all the pleasures of meat.

Note that the entire passage has a futuristic stance. This becomes especially clear in lines 6–8 where the interpreter presages that all the wicked will have been destroyed at the end of forty years. This chronomessianic dating corresponds to the forty years in CD 20:13–15.

13 ולא יהיה להם ולמשפחותיהם חלק בבית התור<ה> ומיום
14 האסף יורה היחיד עד תם כל אנשי המלחמה אשר שבו
15 עם איש הכזב כשנים ארבעים.

> And they and their families shall not have a portion in the house of the Torah. And from the day of the assembling by the Unique Teacher until the destruction of all the warriors who will have joined with the man of lies, will elapse about forty years.

It is generally taken for granted that the word האסף in CD 20 should be rendered "the day of gathering in" and alludes to the demise of the righteous teacher.[43] Contrary to this view, however, our passage appears to echo CD 20:13–15 as is apparent by some of the common wording used in both texts: יתמו/תם; לסוף ארבעים השנה/כשנים ארבעים and כול איש [ר]שע/כל אנשי המלחמה. It is evident, therefore, that CD 20:13–15 makes the same point as does our Psalmic commentator; that in about forty years, all the evil will be destroyed. The chronology of 40 years here corresponds to CD 1 which gives 390 years as the time from Nebuchadnezzar's conquest of Jerusalem in 597 B.C.E. to the rise of the Righteous Teacher. The numeral 390 years plus 40 years equals 430 years, which according to MTA will correspond to the period of the exodus from Egypt. Therefore, the clause ומיום האסף "from the ingathering of the *Moreh Tzedek*" should be rendered "from the Day of the Assembly organized by the Righteous Teacher to the day of the end of the destruction of the generation of the wilderness lasted about 40 years." The author of Pesher Psalms 37 likewise assigns 40 years for the destruction of the Wicked Priest and his followers.

In this passage we see the vital role of calendation in the observance of מועד התענית, that is to say the Day of Atonement, whose general acceptance (according to our text) will bring about fertility to the wilderness and human enjoyment of the fruits of the Messianic Age. See also the text above 1QpHab11:2–7 which also mentions the Day of Atonement. The reckoning of a 364-day year and its

43 Wacholder, "The Teacher of Righteousness is Alive."

festive seasons (according to this Psalmic Pesher and the Pesher Habakkuk) is an integral part of the divine order of the universe.

Conclusion

The Righteous Teacher and the Wicked Priest as well as the *Kittim* form the core of the pesherite commentaries. Scrollists have taken these figures to be the founders of the Essene Movement whose writings now survive in the remains of the Dead Sea Scrolls. Ever since Schechter's publication of the Cairo Genizah texts, scrollists have searched to identify these personalities in the history of the Second Temple. They focused on the Hasmonean period and settled on the foundation of the Essene Movement in the second half of the second century B.C.E. The Groningen Hypothesis assumes a somewhat earlier date, about 200 B.C.E. for the foundation of the Essene Movement.

The standard understanding that the מורה צדק and the Wicked Priest flourished at about this time makes these figures part and parcel of Hasmonean history. The core of the evidence for dating in the second century rests however not on the DSS, but on the archeological discoveries of the scrolls at Khirbet Qumran. There is nothing in these texts, however, to suggest that they were composed at that point and time. In fact, it is difficult to imagine that such a vast literature comprised of so many texts could have been composed within the realm of a century or two.

My supposition that the Righteous Teacher and his nemesis the Wicked Priest were not historical but messianic figures is not without its problems. After all, quite a few passages employ the perfect verb, giving the appearance that they are indeed historical figures. But these problems pale in comparison to the challenges confronting the contrary hypothesis that the Righteous Teacher and Wicked Priest were historical personalities. The classical texts describing the Essenes, Philo, Josephus and Pliny the Elder, describe the Essenes as if they have been part and parcel of Israel since its inception. Indeed, this view was no doubt the belief of the Essenes themselves who take it for granted that Moses himself was, so to speak, an Essene.

In this paper, I have argued that the bulk of the texts speaking of the Righteous Teacher and the Wicked Priest are messianic, not historical. The other passages, which do use the perfect to describe acts of the Righteous Teacher and Wicked Priest, need to be taken as are many prophetic passages – as intermingling past and future. After all, the Dead Sea Scrolls, especially the Book of Jubilees and the MTA believe in a historiographic unity, fusing the *Urzeit* and *Endzeit*. MTA constantly intermingles the chronology of the exodus from Egypt with its messianic foresight. The crucial question is not why certain passages use the perfect to describe certain acts of these personalities, but what

constitutes the core of these texts from which we can derive their message? Were they (as hitherto believed) the founders of the sect, or are they part of the messianic fever that lies behind the composition of the MTA and the Pesherite Commentaries?

On these and other pages I have shown that the hypothesis that the Righteous Teacher and his nemesis are messianic figures makes the DSS literature conform with the bulk of the evidence. The search for historical figures to identify the Righteous Teacher and Wicked Priest in the extant material has been futile, since our available texts never presume that they ever existed. They will, however, arise as will Elijah who will announce the coming of the Shoot of David, the Messiah.

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Philo's Version of the Biblical Episode of the Spies

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Philo's version of the episode of the spies contains many modifications. In particular, he stresses Moses' role as general. It is Moses' idea, rather than God's or the Israelites', to send spies. Independently questioning God's promise, Moses tells the spies that it would be foolish to risk conquering the land if it is poor. He appoints an even number of spies because he stresses the importance of unanimity. Philo does not give the names of the spies because he wishes to keep the focus on Moses. He omits Moses' instruction to take from the fruit of the land because he is aware that his non-Jewish audience might regard this as theft. He avoids mentioning the exaggerations that the spies reported since such exaggerations would be viewed with skepticism by his non-Jewish readers. Philo's Moses is silent in the face of the spies' report because Philo felt ambivalent about stifling a majority, though he has indignation for the masses. Philo omits the dialogue between Moses and God in which God threatens to annihilate the Israelites because this would make Moses appear to be more merciful than God.

Issues

Philo's version (*De Vita Mosis* 1.220-36) of the biblical episode of the spies (Numbers 13-14) raises a number of questions:

Why does Philo give relatively little attention to the episode?

Why is his treatment in *De Vita Mosis* so different from his treatment in other essays by him?

Why does Philo place the episode immediately after the incident with Amalek?

Whose idea is it to send the spies – God's, the Israelites', or Moses'?

If Moses chose the spies, why is he not held responsible for the failure of their mission?

To what degree is Moses independent in giving instructions to the spies?

Why are twelve spies sent rather than an odd number?

Why does Philo not give the names of the spies?

Why does Philo omit the change of the name of Hoshea to Joshua?

Why does Philo omit the instruction to the spies to take fruit from the Canaanites?

To what degree did the spies, upon setting out, have the backing of the Israelite masses?

How did the spies know where to go in an unfamiliar land?

How does Philo deal with the fact that the spies did their work so quickly?

To what extent were there differences among the spies before they delivered their report?

How does Philo deal with the apparent exaggerations in the spies' report?

How does Philo express Moses' reaction to the Israelies' reception of the report?

How does Philo deal with the fact that the Pentateuch requires accepting a majority vote?

Why does Philo omit the dialogue between Moses and God in which God threatens to annihilate the Israelites?

Why does Philo omit the sequel, namely the attack by the Israelites against the Amalekites and the Canaanites?

The Length and Nature of Philo's Account

The first thing that strikes us about Philo's account of the episode of the spies is its very brevity. In the Bible the account in the Hebrew comprises 1078 words and in the Septuagint comprises 1701 words. Philo's version, which is based on the Septuagint, contains 877 words. This gives a ratio of 0.52:1 of Philo to the Septuagint. For comparative purposes, for the episode of the binding of Isaac in the Septuagint (Genesis 22:1-9, 458 words), the ratio of Philo (*De Abrahamo* 167-77, 486 words) to the Septuagint is 1.06:1; for the episode of Moses' campaign against the Midianites (Num 31) there are 1179 words in the Septuagint, whereas Philo's version (*De Vita Mosis* 1.305-18) contains 835 words, a ratio of 0.71:1 to the Septuagint. For the episode of Dinah (Gen 34) there are 753 words in the Septuagint, whereas Philo's version (*De Migratione Abrahami* 223-25) contains 205 words, a ratio of 0.27:1 to the Septuagint. The ratio for Philo's other account (*De Mutatione Nominum* 193-200, which contains 460 words) to

the Septuagint is 0.61:1. For the episode of Phinehas and Zimri (Num 25:6-15) there are 219 words in the Septuagint, whereas Philo's version (*De Vita Mosis* 1.301-4) contains 173 words, a ratio of 0.79:1 to the Septuagint. And yet, brief as the paraphrase of the incident of the spies is, there is hardly a passage in which more additions, subtractions, and modifications are made by Philo than in this episode.[1]

Philo's essay *De Vita Mosis* is very different from the great majority of his essays. Book 1, in which the episode of the spies appears, is a factual history, "Plutarchian" in style, that deals with political and military events and is chronologically ordered, whereas Book 2 is a biography, "Suetonian" in style, that is, systematically ordered and concentrates on the virtues of Moses. We may note that in the second book of his biography of Moses Philo does not proceed chronologically but rather topically, so that he actually (*De Vita Mosis* 2.253), for example, repeats the account of the crossing of the Sea of Reeds, since he is here dealing with the aspect of Moses as a prophet. Apparently, moreover, the episode of the spies presented a number of problems, several of them theological, which required revisions by Philo.

It is particularly instructive to compare Philo's treatment of this incident in *De Vita Mosis* with his treatment of it in the five other treatises where he mentions it. The most striking difference is that in *De Vita Mosis* there is a straightforward account, in the manner of a historian, without any allegorical interpretations. The five other treatises all focus on allegory. *Legum Allegoria* 3.175 cites the allegorical interpretation of "let us return to Egypt" (Num 14:4). *De Posteritate Caini* 60-62 comments on the allegorical significance of the names Hebron, Zoan, Ahiman, Sheshai, and Talmai; 122 gives an allegorical interpretation of "the Lord is with us" (Num 14:9). *De Migratione Abrahami* 122-24 gives an allegorical interpretation of God's words to Moses "I have pardoned according to your word" (Num 14:20).[2] *De Mutatione Nominum* 121-23 cites the allegorical significance of the change of name of Hoshea to Joshua; 224-27 comments on the allegorical significance of the plucking of a cluster of grapes by the spies; 265 gives an allegorical interpretation of "the Lord is with us"

1 Josephus' account of the episode of the spies is similarly brief. In fact, his version (*Ant.* 3.300 16) has 768 words. The Hebrew account in the Bible (Numbers 13 14), upon which he may have drawn, has 1078 words; the Septuagint has 1701 words. This gives a ratio, 0.71:1, of Josephus to the Hebrew Bible and 0.45:1, somewhat less than that of Philo, 0.52:1, to the Septuagint.

2 Philo is clearly aware that the allegorical method is separate and distinct from the literal interpretation, as we see in his remark (*De Abrahamo* 99) that he has heard (ἤκουσα) that some natural philosophers interpret the episode of Abraham and Sarah in Egypt allegorically (ἀλληγορούντων), not without good reason (ἀπὸ σκοποῦ, "away from the mark"); and he then proceeds, indeed, to present this allegorical interpretation.

(Num 14:9). *De Somniis* 2.170-71 remarks on the allegorical significance of the cluster of grapes plucked by the spies. One might say that the passages about Moses in these other treatises are the views of Philo the philosopher; the treatment in *De Vita Mosis* is most closely parallel in approach to that of the historian Josephus in the first books of the *Antiquities*.

We may wonder why Philo, who is so fond of allegory, avoids presenting an allegorical interpretation of the Moses narrative in *De Vita Mosis*. Perhaps the answer may be found in Philo's statement (*De Vita Mosis* 1.1) that his aim is to bring the story of Moses to the attention of those who deserve not to remain in ignorance of it. It seems clear from the remark that follows, namely that Greek writers have refused to treat him as worthy of memory, that Philo seeks to correct this by informing those who read these Greek writers, clearly non-Jews, of the truth about Moses' greatness. Apparently, since the *De Vita Mosis* is intended for a wider, non-Jewish audience, Philo avoids the esoteric, allegorical approach, which would be understood only by a much smaller circle of Jews. It is only when he comes to the description of the high priest's vestments and the apparatus of the Tabernacle that he feels the need in *De Vita Mosis* (2.71-151) to present an allegorical interpretation, since a literal interpretation would most likely leave the non-Jewish reader wondering why these vestments and apparatus must be as they are in their intricate details.

The fact that this treatise presents a rewritten version of the Pentateuch, in this respect similar to Josephus' *Antiquities*, will explain the relatively straightforward narrative style, with few philosophical and allegorical interpretations, such as we find in most of Philo's other works. It would seem, therefore, that *De Vita Mosis* is presented as a kind of official biography of by far the most important figure in Judaism, Moses, intended for the non-Jewish world in the hope, if not of actually winning them to convert to Judaism, at least of explaining to an intelligent and scientifically sophisticated audience, in a rational and credible fashion, the key events reported in the central book in Judaism, namely the Pentateuch.[3]

The Decision to Send the Spies and the Instructions Given to Them

In the Bible (Num 13:1) there is no indication of the background of the decision to send spies into Canaan; nor is there any indication of the connection between this decision and what precedes, namely the punishment inflicted upon Miriam for her criticism of Moses for marrying an Ethiopian woman (Num 12). In Josephus (*Ant.* 3.300-16) it comes immediately after the Israelites com-

3 On Philo's intended non-Jewish audience for *De Vita Mosis* see Maren Niehoff, *Philo on Jewish Identity and Culture* (Tübingen: Mohr Siebeck, 2001) 13.

plain about their lack of food and the appearance of the quails (*Ant.* 3.295-99). It thus follows the constant complaints of the Israelites and reinforces the view that they are an unruly and ungrateful mob. In Philo (*De Vita Mosis* 1.220-36) the passage occurs immediately after the Israelites utterly defeat the Amalekites (Exod. 17:8-16, *De Vita Mosis* 1.214-19). It thus follows an extraordinarily great military victory in which Moses himself played a key role. It thus stresses Moses' role as a great general who skillfully plans the defeat of the enemy.[4]

A good general knows that a most important element in military success consists of obtaining, through reconnaissance, information about the enemy. Moses clearly opposes putting the decision up for a vote by the masses, who, he implies in a snide remark, argue ignorantly "in the usual way" (*De Vita Mosis* 1.220). He instead prefers to obtain first-hand information and opts for a careful report based upon solid knowledge and on that basis to decide on a course of action. We read (*De Vita Mosis* 1.216), in a supplement to the biblical account that adds to Moses' qualifications as a general, that Moses had sent out scouts, from whom he had learned that the enemy was not far distant. We see Moses' ability as a general in the way in which he plans reconnaissance of the land of Canaan, into which he plans to lead the Israelites. In the first place, whereas in the Bible (Num 13:2) and in Pseudo-Philo (15.1) it is God's idea or the Israelites' (Deut 1:22-23) to send scouts, Philo (*De Vita Mosis* 1.220-21),[5] as later Josephus (*Ant.* 3.302), ever seeking to build up the stature of Moses as a military planner, attributes the plan to Moses.[6] Philo (*De Vita Mosis* 1.220) explains that inasmuch as this was already the second year since the Israelites had left Egypt, Moses, on his own, came to the conclusion, and without calling an assembly of

4 In Pseudo-Philo (15) it comes after the census of the people (Numbers 1) and, in what seems to be something taken from the narrative of the spies, God's decision to put to death forty-nine fiftieths of the multitude because they lacked faith in Him (14.4), and, in what again seems to be something taken from the narrative of the spies, the mourning and lamenting by the people in the desert for two years. Again, this juxtaposition emphasizes the importance of having faith in God and of the terrible price paid for lack of faith in Him. In Josephus (*Ant.* 3.300-16) it comes immediately after the Israelites complain about lack of food and the appearance of the quails (*Ant.* 3.295-99). This juxtaposition emphasizes the degree to which the Israelites needlessly complain, whereas faith in God fully guarantees their future.

5 See also *Midrash Num. Rabbah* 16.8 and the parallels cited by Louis Ginzberg, *The Legends of the Jews* (7 vols.; Philadelphia: Jewish Publication Society, 1928) 6:92 n.503.

6 Ginzberg (*Legends of the Jews*, 6:92, n.503) notes the apparent contradiction between Num 13:1-2, in which it is God who directs Moses to send the scouts into Canaan, and Deut 1:22-23, in which it is the Israelites who suggest this to Moses. He notes that the rabbis recognize this problem and attempt to reconcile these verses, whereas Josephus and Philo ignore Num 13:1-2. Like a good general, Moses seeks to obtain a good idea of the country through a first-hand report. Instead of allowing them to argue among themselves in their usual way, he wants to obtain a report of the country by first-hand information.

the Israelites, that it was advisable to investigate the Land of Israel. In Josephus, Moses presents his plan in a speech to the gathered multitude (*Ant.* 3.300-2), whereas in Philo (*De Vita Mosis* 1.220) Moses, discharging his responsibility as a general, without calling an assembly of the Israelites and without consulting anyone, comes to the conclusion that it is advisable to inspect the land in which they propose to settle. It is significant that Philo (*De Vita Mosis* 1.306) denominates the Israelites as Moses' army. Like a good general, Moses knows the importance of getting intelligence before engaging in battle; and so, as in a previous case also, in an extra-biblical addition, before the battle with Amalek (*De Vita Mosis* 1.216) he learns from his scouts that the enemy is not far distant and proceeds to muster his men of military age.

Whereas in Josephus (*Ant.* 3.303) it is the Israelites who choose the twelve scouts, Philo (*De Vita Mosis* 1.221), realizing that a general would not entrust to the masses such an important decision as the choice of the scouts, says that Moses chose them on the basis of their merit. Consequently, he did not call an assembly of Israelites. In the Bible (Num 13:1-2) God instructs Moses to send as spies one man from each of the twelve tribes, each of them a leader (נשׂיא) among them. Moses (Num 13:3) proceeds to select distinguished men, all of them heads of the people. In the Bible (Num 13:16), Philo (*De Vita Mosis* 1.221), and Pseudo-Philo (15.1), it is Moses who accepts responsibility and selects the twelve scouts, whereas in Josephus (*Ant.* 3.303) it is the Israelites who, more democratically, do so. Philo (*De Vita Mosis* 1.221) states that Moses, displaying the excellence of a leader in choosing men carefully for such an important mission, adds to the biblical statement by noting that he proceeded to choose twelve men, each the chief officer (φύλαρχος) of his tribe, men most esteemed (δοκιμωτάτους, "most notable," "most approved") according to their merit (ἀριστίνδην), the goal being that each of the tribes should be equally represented, so that, with an emphasis on the importance of unity, there should not be any quarreling amongst them and so that the emissaries should report the full truth (ἀψευδεῖν, "not to lie").[7]

However, this presented Philo and Josephus with a real problem, namely, how, if Moses took the initiative in naming the spies, he could not be held responsible for the failure of the spies' mission.[8] Indeed, one rabbinic tradition presents a scenario in which Moses is persuaded by the Israelites to send spies,[9] thus

7 Pseudo-Philo (15:1) does not specify that the spies are to be one from each of the tribes, nor does he indicate what qualities they are to have, as if to say that the only important point is that they should have faith in God.

8 Josephus saves Moses from this criticism by having him exhort the multitude to be of one mind (ὁμονοῶμεν).

9 See *Midrash Num. Rabbah* 16.7; David Tzvi Hoffmann, ed., *Midrash Tannaim* (Berlin: Ittskovski, 1909) 1.22, p.11; Dov Heiman and Yiṣḥaq Shiloni, eds., *Yalqut Shimoni* (Jerusalem: Mosad Harav

transferring to the Israelites the responsibility for the failure of the mission.[10] Philo's answer (*De Vita Mosis* 1.231) is that the envoys were not of one mind and thus, by implication, that it is they, and not Moses, who should be blamed for their disunity.

Philo also explains, as the Bible does not, why Moses decided to send the scouts now in the spring, namely that it is in the spring that crops come to their fullness and trees begin to show their natural growth; and hence this is the best time for testing the goodness of the land. He then adds the extra-biblical instruction that they should wait until the summer is at its height so as to bring back fruits, presumably in their ripeness, as samples of the wealth of the land.[11]

In the Bible (Num 13:17-20) Moses' instructions to the spies are very brief, consisting of six points: they are to see whether the inhabitants of Canaan are strong or weak, whether they are many or few, whether the land itself is fat or lean, whether they have trees, and what kind of cities they have; and they are to bring back some of the fruit of the land. Josephus (*Ant.* 3.303) omits altogether Moses' instructions to the scouts. Philo's Moses, the consummate planner, speaks at much greater length (*De Vita Mosis* 1.222-26). He tells the scouts not only what information he wishes to obtain but why he wishes to get those particular kinds of information and how he proposes to counter the number and power of the Canaanites with machines and siege engines. Above all, inspiring commander as he is, he instills in them faith that with the help of God they would overcome even the most invincible forces, as they had been able to do throughout their journey in the desert.

Philo (*De Vita Mosis* 1.220) sets forth, as the goals of the mission, to obtain reliable knowledge to replace the mere hearsay and then to calculate what

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Kook, 1986) 742, p. 236; Eleazar Grunhut, ed., *Sefer Halikutim* (6 vols.; Jerusalem, 1903) 4:28a–b; *Tanḥuma B.*, ed. Solomon Buber (Vilna: Re'em, 1885) 8, pp. 64–65; *Tanḥuma Shelah* (Bene Berak: Sifre Or ha-Ḥayim, 1997) 5, p. 324; cited by Ginzberg, *Legends of the Jews*, 6:92 n. 502; Louis Finkelstein, ed., *Sifre Deut* (2nd ed.; New York: Bet ha-Midrash le-Rabanim be-Amerikah, 1969) 20, p. 32.

10 Pseudo-Philo (15.1) does not give any reason for the decision to send spies other than it was so commanded by God to Moses. This fits in with his emphasis on the centrality of God's actions. As Frederick J. Murphy, *Pseudo-Philo: Rewriting the Bible* (New York: Oxford Univ. Press, 1993) 77, remarks, Pseudo-Philo's leaders are good not when they devise their own plans but when they follow God's will.

11 Moses in Josephus (*Ant.* 3.302) proposes that the scouts investigate the excellence of the land and the amount of power that the inhabitants have. But, more important, he adds what is not found in the biblical instructions, namely that they should be united (an aim, according to Philo also [*De Vita Mosis* 1.221]) and, above all, that they should honor God, "who is our helper and ally in all matters." This, we may say, prepares us to justify what God does to the majority of spies, who give up hope of conquering the Canaanites; for if, indeed, they had recalled all that God had done for them in inflicting the Egyptians with the ten plagues, in enabling the Israelites to leave Egypt, in splitting the Sea of Reeds and defeating the Egyptians, in giving

ought to be done.[12] Moreover, very remarkably, Philo tells these twelve leaders of his people that the reason why they should investigate the fertility or infertility of the land is that if it should turn out that the land is poor, it would be foolish to take risks in order to conquer it (*De Vita Mosis* 1.224). For the leader of the Israelites to suggest even for a moment that they might not fulfill the divine promise of entering and controlling the Land of Israel just because reconnaissance might indicate that the land is not worth conquering would show tremendous independence on the part of Moses even to the point of a showdown with God Himself. Moses is not a rubber-stamp of God, even to the point, if need be, of not fulfilling the divine promise of the Land of Israel. He will use his own judgement as a military planner. Furthermore, whereas in the Bible (Num 13:17-20) and in Philo (*De Vita Mosis* 1.222), who has little faith in the decision of the masses, it is to the scouts that Moses indicates what they are to investigate – the places, the people, and their circumstances – in Josephus (*Ant.* 3.300-2) it is to the entire assembly of the Israelites that Moses indicates the matters to be investigated. Josephus' Moses, thus, realizing that ultimately it was the entire populace that would have to make the crucial decision whether and when to invade Canaan, indicates directly to the people what matters the scouts are to investigate. Moreover, whereas Josephus' Moses (*Ant.* 3.300-1) gives an extra-biblical inspiring speech to the entire people reminding them that no nation will be able to stop them and assuring them that the land that God has promised them will soon be theirs, Philo's Moses, the sound general, says nothing to the twelve leaders about the Promised Land but rather places matters on a military plane and assures them that their faith in God will enable them to overpower their enemies (*De Vita Mosis* 1.225).

One would have expected that Moses would have named an odd number of scouts, so that if there were disagreements the vote would never be tied. Why, then, did he name twelve scouts? Philo's answer, since he was a leader of the huge Jewish community of Alexandria,[13] which consisted undoubtedly of people of diverse backgrounds and interests,[14] shows his realization of how

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them the means to survive in the totally barren desert by feeding them with manna and quails, in giving them the power to defeat the Amalekites utterly, they should have had faith that God would enable them to fulfill the promise that He had given the Israelites to lead them into the Promised Land.

12 Josephus (*Ant.* 3.302) sets forth as the goal of the mission to find out the excellence of the land and the amount of power that the inhabitants have. Pseudo-Philo does not mention any instructions at all, as if they were not to use their minds in answering any specific questions but rather simply to have complete confidence in God and to report what they saw, with the implicit understanding that God would take care of everything.

13 In particular, Philo headed the delegation of the Jews to the Emperor Gaius Caligula in 39-40, about which Philo himself writes at length in his *Legatio ad Gaium* and to which Josephus (*Ant.* 18.259-60) also refers.

14 See the analysis by John M.G. Barclay, *Jews in the Mediterranean Diaspora: From Alexander*

important it was to have a united community. Hence, Moses decided that the scouting committee should consist of twelve, corresponding to the number of tribes (*De Vita Mosis* 1.221), with one head man from each, so that the nation might achieve a unified consensus once they had given their report.[15] This would, moreover, remind the scouts that they represented the historic twelve tribes of Israel. In the Bible (Num 13:2) God does not give any particular reason for sending scouts, nor does He state why He does so at this particular time. Philo (*De Vita Mosis* 1.220) explains that since this was already the second year since the Israelites had left Egypt, Moses, on his own, came to this conclusion.

Whereas the Bible (Num 13:4-15) gives the names of the scouts, neither Philo (*De Mutatione Nominum* 121-24) nor Pseudo-Philo nor Josephus gives us the names of those chosen, except for Joshua and Caleb, the two who present the minority report.[16] The omissions imply that it is what they stand for, rather than their identity, that concerns Philo, as well as his desire to continue to place the focus on Moses. In *De Vita Mosis*, however, Philo, who always seeks to keep the focus on Moses, omits the names of the scouts, even the names of the two dissenters, Joshua and Caleb.[17] He thus keeps the focus on Moses and on his qualities of leadership.

After the enumeration of the names of the twelve scouts, the Bible (Num 13:16) adds that Moses called Hoshea the son of Nun Joshua. Philo omits this, though he does mention the change of Sarai's name to Sarah (Gen 17:15, *De Mutatione Nominum* 61, 77-80) and Abram's name to Abraham (Gen 17:5, *De Mutatione Nominum* 60-76), and asserts that the change of these names was ridiculed by "a godless and impious fellow."[18] One of the charges against the Jews

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to Trajan (323 BCE-117 CE) (Edinburgh: Clark, 1996) 82-124, in which he stresses the different levels of assimilation among Egyptian Jews.

15 So also Josephus (*Ant.* 3.302): "Let us all be of one mind."

16 Philo does not present the names of Caleb and Joshua here but only when he discusses the significance of the change of Joshua's name (*De Mutatione Nominum* 121-24). In the case of Josephus, the omission of the names should not surprise us, inasmuch as he declares (*Ant.* 1.176-77) that he is inclined to omit, because of their strangeness to a Greek ear, the names of the seventy descendants of Jacob who went down to Egypt (*Ant.* 1.176-77); but he ends up citing the names, only to refute those opponents of the Jews who had contended that the Jews were of Egyptian rather than of Mesopotamian origin. On the other hand, Josephus omits the names of the families that returned to Jerusalem from Babylonian captivity (Ezra 2:2-61, 1 Esdras 5:4-38, *Ant.* 11.68), the names of those Jews who sent away their foreign wives at the request of Ezra (Ezra 10:18-44, 1 Esdras 9:18-35, *Ant.* 11.152), the names of King Ahasuerus' seven chamberlains (Esth 1:10, *Ant.* 11.190), the names of his seven counsellors (Esth 1:14, *Ant.* 11.192), and those of Haman's ten sons (Esth 9:7-9, *Ant.* 11.289).

17 Similarly, in the extended narrative of Balaam in his essay *De Vita Mosis* (1.263-305), Philo, remarkably, does not mention the name of Balaam even once, seeking to keep the focus on Moses, and perhaps motivated by a concern not to offend his non-Jewish audience.

18 Josephus omits this last point about ridicule, as he does the changes of name of Abram to

even by someone such as Plutarch, who was relatively sympathetic to them,[19] was that they were superstitious. In the words of Plutarch (*De Superstitione* 169): "But the Jews, because it was the Sabbath day, sat in their places immovable, while the enemy were planting ladders against the walls and capturing the defenses. Moreover, they did not get up, but remained there, fast bound in the toils of superstition as in one great net." Thus, to the Greeks, the addition of an *alpha* to the name of Abram (Gen 17:5) would seem difficult to comprehend, as Philo's efforts (*De Mutatione Nominum* 66-76) to explain the matter make clear.[20] Moreover, Josephus may well have been sensitive to the scoffing, noted by Philo (*De Mutatione Nominum* 60-62), of those who ridiculed the change of names of Abram to Abraham.[21] Consequently, Philo (*De Mutatione Nominum* 121) mentions the change of Hoshea's name to Joshua in an essay addressed to a Jewish audience (*De Mutatione Nominum* 121); but in an essay (*De Vita Mosis*) addressed to a predominantly non-Jewish audience he avoids the embarrassment.

It is significant that in the Bible (Num 13:20) Moses tells the spies to take from the fruit of the land of Canaan. This raises the question whether this would not be outright theft. We may note how sensitive Philo was to the charge that the Israelites were guilty of stealing from the Egyptians what they had taken from them before leaving Egypt. Indeed, Philo (*De Vita Mosis* 1.141) implies that the Israelites, in taking these things from the Egyptians, were accused of being greedy and covetous of what the Egyptians possessed. Philo (*De Vita Mosis* 1.140-42) must have been aware of this charge, since he devotes three paragraphs to defending the action of the Israelites, who, he says, were not unmindful of the injustices that had been contrived against them. He then defends their action further by stating that they were, in effect, receiving a bare wage for all the time that they had served and that they were retaliating, on a lesser scale,

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Abraham and of Sarai to Sarah, though he does have the change of Jacob's name to Israel (*Ant.* 1.333).

19 See my "The Jews as Viewed by Plutarch," in my *Studies in Hellenistic Judaism* (Leiden: Brill, 1996) 529-52.

20 So Samuel Sandmel, *Philo's Place in Judaism: A Study of Conceptions of Abraham in Jewish Literature* (Cincinnati: Hebrew Union College Press, 1956) 66, n.277.

21 Hence, Josephus simply omits this change of names completely. For similar reasons, as appears from Philo's strained efforts to explain the change of Sarai's name to Sarah (Gen 17:15, Philo, *De Mutatione Nominum* 77-80), Josephus omits her change of name also. Josephus' retention of the change of name of Jacob to Israel (*Ant.* 1.333) and of Joseph to Zaphenath-Paneah ("Discoverer of concealed things," *Ant.* 2.91) perhaps results from his wish to aggrandize the reputation of the Jewish people. Josephus (*Ant.* 2.91) retains the change of name of Joseph to Zaphenath-Paneah ("he who explains what is hidden") because this is the name given to him by the Egyptian king. Those appointed to high positions were customarily given names reflecting their newly-gained importance, and hence this is a tribute to Joseph.

for the very enslavement of their persons.[22] Moreover, he suggests that their action may be viewed as an act of war, a rule of which is that to the victors belong the spoils. Finally, he insists, it was the Egyptians who began the wrongdoing by reducing guests and suppliants to slavery. Consequently, when the Israelites had the opportunity, they avenged themselves without actually taking up arms, shielded by the hand of justice.[23]

We should not be surprised, therefore, that Philo and Josephus, aware of such a charge, do not have Moses thus instruct the spies. Philo (*De Vita Mosis* 1.222-26), as we have remarked, has Moses address the spies before the beginning of their mission but says nothing about bringing back samples now of the fruits that they would find in Canaan. Philo (*De Vita Mosis* 1.230) does say that they did pluck some of the fruits; but they apparently did so on their own initiative. Josephus (*Ant.* 3.302) has Moses address the assembly of the Israelites and suggests that they send scouts "to mark the richness of the land" but says nothing about actually taking samples of the fruits. To be sure, he does say (*Ant.* 3.304) that the spies brought back some of the products of the land, but it is clear that they did so not because Moses had ordered them to do so but, as with Philo, on their own initiative.

The Investigation of the Land

Philo (*De Vita Mosis* 1.227-32) devotes much more attention than does the Bible to a description of the actual investigation by the spies. We naturally wonder what the attitude of the Israelites was and what their fears must have been as the spies began their mission. Philo fills in the details, particularly, as he often does, the feelings of the people. We are told that the spies had the complete backing of the people as they set out, escorted by the whole multitude; and we are told of the natural fears of the people, since this was, indeed, a dangerous mission, lest they be captured and slain, thus bringing about two misfortunes – the death of these men and the resulting lack of information that was so necessary to guide the Israelites if they were to conquer the enemy. Philo's identification of the Israelite masses with the spies to the point of fearing

22 Jubilees 48:18 also states that the Israelites took the vessels and garments from the Egyptians in return for the bondage in which they had forced them to serve.

23 Josephus explains this by noting the good relations between Egyptians and Israelites, as seen in Josephus' addition (*Ant.* 2.314) that when the Israelites left Egypt, the Egyptians honored them with gifts, "some in order that they might depart swiftly, others from neighborly relations with them." A similar statement is found in the rabbinic tradition (*b.Ber.* 9b; Horovitz ed., *Mekilta di-Rabbi Ishmael, Pisha* 13 [1960] p. 47), namely that the Israelites took the things against the will of the Egyptians, whereas another view is that the Egyptians gave them to them even though the Israelites did not want them.

for them will help to justify the heavy penalty inflicted upon the Israelite masses. The fact that, according to Philo, in an extra-biblical addition, the whole multitude accompanied the spies would serve to justify the divine punishment meted out to all the Israelites.

We would naturally wonder how spies would know where to go in an unfamiliar land, and so Philo (*De Vita Mosis* 1.228) adds that they took with themselves scouts and guides. It would make sense that they would first attempt to get a bird's-eye view of the entire country by climbing a high mountain; and this is exactly what Philo (*De Vita Mosis* 1.228) tells us they did, namely to ascend the highest of the mountains in the neighborhood in order to survey the country. We are then told what they found in the way of agricultural abundance, namely barley, wheat, and grass. The instructions that they had received, according to Philo, as we have noted, were that they were to investigate whether the land had fruit-producing trees; and they do, indeed, note that the uplands are full of vines and other trees. Though they had not been specifically instructed to see whether the land had sufficient water – a crucial factor, as all generations who have lived in the land know, and one that must have been especially meaningful to them, inasmuch as they had been traveling through an almost waterless desert for so long – they are provident enough to notice that the land is intersected with springs and rivers that give it an abundance of water.

An obvious criticism of the spies is that they did their work too quickly and superficially and were carried away by their first impressions. Philo (*De Vita Mosis* 1.230) omits that they spent only forty days on their investigation (Num 13:25); and, indeed, he goes out of his way to remark that having noticed these things they stayed on in order to get a more accurate view, since, as he says, "first impressions are treacherous (ὀλισθηρόν, "slippery") and only slowly get the seal of reality" (ἐνσφραγιζόμεναι, "stamped as with a seal").

In response to their instructions to investigate whether the Canaanite cities were favorably situated and strongly built, they observe (*De Vita Mosis* 1.229) that they were, indeed, strongly fortified, owing to both their favorable situation and the solidity of their walls. In response to their instructions to investigate the size and strength of their population, they note that the people of the Land were countless in number and of huge stature, though, realizing that their fellow Israelites would raise their eyebrows at such an obvious exaggeration, they remark that they were merely giant-like in their physical superiority in size and strength.

That the spies used foresight is clear from the fact (*De Vita Mosis* 1.230) that when they plucked fruits they were careful to select not those that were at the first stage of hardening but rather those that were darkening to ripeness, in order that they should be in good condition when they exhibited them to the

multitude. Moreover, in what would appear to be a clear effort to show that the spies were aware that their fellow Israelites would wonder whether they were exaggerating in presenting their report, Philo (*De Vita Mosis* 1.231) stresses that the spies themselves were amazed by the huge size of the bunches of grapes and the incredible spectacle that they presented. Whereas the Hebrew text (Num 13:23) states that they cut down a branch with a single cluster of grapes and carried it on a pole between two of them, Philo presents a much more impressive picture, noting that they cut off a bunch and carried it suspended from the middle of a beam, the ends of which were laid on two youths. Moreover, the biblical statement (Num 13:23) that they bore one cluster of grapes on a double pole would seem to be a gross exaggeration; hence, Philo, well aware of such an objection and eager to convince his readers, who, at least in *De Vita Mosis*, were for the most part non-Jews,[24] admits that the spectacle of the size of the bunches of grapes was incredible and then proceeds to explain how such huge bunches could have been borne, namely that a fresh pair of youths relieved its predecessors at intervals, since they were wearied by the great weight of the burden. All this care and foresight on the part of the spies, as stressed by Philo, is clearly a tribute to Moses, who had selected them.

The Report of the Spies

According to Josephus (*Ant.* 3.302), who, like Thucydides, constantly emphasizes, both in his portrayal of the revolt of Korah and in his description of the revolutionaries of his own day,[25] how disastrous internal dissension is, when Moses addressed the assembly of the Israelites urging them to send spies, he had stressed that they should all be of one mind (ὁμονοῶμεν). Philo, who, presumably drawing on his own experience as a leader of the Jewish community of Alexandria, must have known how vital it was for his people to be united,

24 Philo expresses the aim of seeking to answer the misrepresentation of Moses by non-Jews, since, as he remarks at the very beginning of *De Vita Mosis* (1.2), "Greek men of letters have refused to treat him as worthy of memory." It would seem that *De Vita Mosis* is an apologetic treatise addressed primarily to non-Jews, perhaps even for missionary purposes, or that it was addressed to wayward Jews who had imbibed Greek culture and who had raised questions about Bible. See Erwin R. Goodenugh, "Philo's Exposition of the Law and His *De Vita Mosis*," *HTR* 26 (1933) 109-25; and *An Introduction to Philo Judaeus* (New Haven: Yale Univ. Press, 1940) 37-38. Such is the conclusion also of William J. Robbins, "A Study in Jewish and Hellenistic Legend with Special Reference to Philo's Life of Moses" (Ph.D. diss.; Brown University, 1947) 47. An indication that Philo's *De Vita Mosis* was read by non-Jews may be seen in the third-century romance the *Aethiopica* (9.9) of Heliodorus, who echoes *De Vita Mosis* (2.195), cited by Arthur D. Nock, *Conversion: The Old and the New in Religion from Alexander the Great to Augustine of Hippo* (Oxford: Oxford Univ. Press, 1933) 286.

25 See my *Josephus's Interpretation of the Bible* (Berkeley: Univ. of California Press, 1998) 140 43.

says (*De Vita Mosis* 1.231) that on vital matters (ἀναγκαίων, "necessary things") they were not of one mind (ὁμοφρονοῦντες). Realizing that in all likelihood the differences of opinion that they later exhibited must have had their antecedents, he specifically notes (*De Vita Mosis* 1.232), in an extra-biblical addition, that even during the journey before they returned there were numberless contentions among them, though, he adds, they were of a lighter kind, inasmuch as they did not wish their disputes or conflicting reports to produce dissension (στάσιν) in the mass of the people; and it was only after they returned that these disagreements became more severe.[26]

Nonetheless, according to Philo (*De Vita Mosis* 1.235), there was unanimity among the spies in extolling the beauty of both the plain and hill country. According to him (*De Vita Mosis* 1.233), however, one party, consisting of ten representatives, conveyed their cowardice, exaggerating the fortifications of the cities and their populations, as well as everything (πάντα) else, and consequently created fear in the populace. Philo does not, however, mention that they showed the people the fruits that they had brought back. Nor does he mention that they said that the land was inhabited by giants or that all whom they saw were huge. Nor does he say that they compared themselves with grasshoppers or that they said that the land devours its inhabitants. In short, Philo, apparently realizing that his readers would approach such exaggerations with skepticism, presents a more nuanced majority report so that one can more readily understand why the populace gave it credence.[27] The other party, consisting of two representatives, did the very opposite, conveying their hopefulness and belittling the obstacles, and encouraged the people not

26 Unlike Philo, Josephus (*Ant.* 3.303) mentions the biblical statement that they had completed the whole task within a mere forty days and thus emphasizes the superficiality of their observations. However, influenced by the beauty of the fruits of the Land, the multitude, being unsophisticated, were at first aroused to war. Pseudo-Philo (15:1-2) presents both the majority and minority reports in the most sharply divergent tones.

27 We may note that similarly, in other places in his reworking of the biblical narrative, Josephus also avoids undue exaggeration and the grotesque, which might have provoked the ridicule of a later satirist such as Lucian. Thus, for example, whereas the Bible (Judg 16:9) reports that Samson "broke the bowstrings as a string of tow is broken when it touches the fire," Josephus avoids this gross exaggeration, and his Samson simply bursts the shoots asunder (*Ant.* 5.310). Pseudo-Philo (15:4), while not mentioning that the Israelites wept or that they had expressed regret that they had not died in Egypt or in the wilderness, does remark that the people did, in effect, say that God had contradicted Himself, on the one hand saying that He would convey the Israelites to a land flowing with milk and honey and, on the other hand, bringing them up that they should fall by the sword and their wives be captured. Pseudo-Philo (15:5) omits the murmuring of the people against Moses and Aaron. He also omits the determination of the people to appoint a leader to replace Moses and to lead them back to Egypt. Apparently, Pseudo-Philo wishes to emphasize that the rebellion of the populace was not against Moses but against God Himself; and hence this will justify the punishment inflicted by God upon the people.

to be faint-hearted, assuring them that they would prevail without a fight, since they were so powerful.

According to the Bible (Num 13:27-29), the majority, while admitting that the land did indeed flow with milk and honey and while exhibiting the huge size of the fruits, stressed the tremendous obstacles that the Israelites would encounter if they attempted to conquer the land, namely, that the people were powerful, that their cities were greatly fortified, that the offspring of the giant lived there, that it was inhabited by many tribes, and that the land, as they expressed it, devours its inhabitants. Caleb, however, expressed confidence in the ability of the Israelites to conquer it.[28] Similarly, in order to give the majority report of the spies greater credibility and to avoid the charge that the majority had been carried away by first impressions, Philo, the experienced diplomat, says that they stayed on to get a more accurate view.

The majority report, as described in the Bible, contained contradictions within itself. On the one hand, we hear (Deut 1:25) that they brought back word to the Israelites that the land that God had given them was good, that it flowed with milk and honey (Num 13:27). On the other hand, as we have noted, they pointed out that the people there were huge and that they themselves by comparison were like grasshoppers (Num 13:33). The people turned to complain bitterly against God, accusing Him of having taken the Israelites out of Egypt in order to deliver them into the hands of the Amorites (Deut 1:27). According to the Bible (Num 14:1), the *entire* assembly agreed with the majority report. The reaction that followed was that they wept that night, and *all* of them murmured against Moses and Aaron, *all* of them expressing regret that they had not died in Egypt or in the wilderness and complaining against God, as if pointing out that He had contradicted Himself, in having brought them to the land so as to die there and to have their wives and children taken captive (Num 14:3); and they expressed the desire to appoint a leader who would take them back to Egypt (Num 14:1-4). The reaction of Moses and Aaron at this point (Num 14:5) was to fall upon their faces before the *entire* congregation. On the other hand, Joshua and Caleb tore their garments (Num 14:6), as one does when receiving terrible news,[29] and they spoke to the assembly of the people telling them not to fear, since God was with them.[30]

28 Josephus, though he definitely did not agree with the majority report of the spies, nevertheless, apparently felt that to include such exaggerations would invalidate the credibility of his own account; and he completely omits these statements.

29 Thus in the Bible Reuben (Gen 37:29) tears his garments when he finds Joseph missing, and Jacob does likewise (Gen 37:34) when he sees Joseph's blood-stained garment.

30 In Josephus' version the spies start by presenting a more positive report (*Ant.* 3.304): they refer to the beauty (εὐπρεπείᾳ, "splendid appearance") of the fruits and add greatly to the praise of the Land by mentioning the abundance of blessings (τῷ πλήθει τῶν ἀγαθῶν) that the Land had. The fact that Josephus, in an extra-biblical addition, gives the impression that

The Reaction of the Israelites and of God to the Report of the Spies

At this point, according to the Bible (Num 14:10), the *entire* assembly wanted to pelt Joshua and Caleb with stones. This, as in the rebellion of Korah (Numbers 16-17), was a crucial test of Moses' leadership.[31] There (Num 16:5-11) Moses stood up to Korah, addressed him and the entire assembly, and fearlessly told him that God Himself would choose who should be high priest. Here, however, Moses does not address the congregation either to rebuke them or to encourage them. Instead, we are struck with Moses' silence, perhaps because he felt ambivalent about stifling a majority.[32] Rather, we are told (Num 14:5) that Moses and Aaron fell on their faces before the entire congregation. Philo (*De Vita Mosis* 1.236), however, perhaps reflecting his own experience as a leader and the Platonic-like disdain that he has for the masses, has Moses express indignation at the masses, especially since he fears the punishment that God might inflict upon them. We are not, nevertheless, informed as to the form of Moses' indignation.

God then, in the Bible (Num 14:26-35) in a supplementary address to Moses and Aaron, spells out His decree that all those twenty years of age and above, except for Caleb and Joshua, will die in the wilderness, and that their children will roam in the wilderness for forty years, corresponding to the number of days

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the report of the scouts was self-contradictory, in that the beauty of the fruits and the many blessings that they reported that the land possessed roused the multitude to war, would seem to indicate that the people, being unsophisticated, were positively impressed, at least at first, by the report and that they interpreted it as favoring an attack on the Canaanites. However, whereas the biblical account of the report states that the Canaanites were powerful and that their cities were very greatly fortified and that the scouts had seen there "the offspring of the giant," but does not indicate the mood with which they made these statements, Josephus actually says that the scouts terrified (φοβοῦντες) the multitude and were much more specific in indicating what frightened them, namely that the rivers were impossible (ἀδυνάτους) to cross because of their size and depth, the mountains were impossible (ἀμήχανα) for travelers to climb, and the cities were mighty with ramparts and with the strength of surrounding walls (*Ant.* 3.304).

31 See my *Josephus's Interpretation of the Bible*, 386-97.

32 At this point it is God Who appears in the Tent of Meeting to the congregation (Num 14:10). He then speaks to Moses and, in exasperation, declares that He will annihilate the people and will make Moses himself into a greater and more powerful nation than they. This does seem like a case of God losing His temper, and one wonders how just it is for God to wipe out the entire people without exception instead of restricting Himself to those who sought to stone Joshua and Caleb, since, we may assume, not all the people were present in the assembly that sought to stone Joshua and Caleb. Moses then successfully argues that if God does so, the nations of the world will say that God destroyed the Israelites because He lacked the power to bring them into the Land. He then appeals to God's quality of mercifulness (Gen 14:13-19); and God is apparently convinced by Moses' plea to forgive the Israelites (Num 14:20).

that the spies spent in investigating the Land, after which they will enter the promised Land. In the pestilence that followed, however (Num 14:37), the Bible reports explicitly that those who had "brought up an evil report of the Land," that is, the ten spies who gave the pessimistic report, perished, while the two who had counselled the people not to be terrified were saved, though it is not clear who else, if any, perished in the plague. Nevertheless, immediately thereafter, according to the Bible, God tells Moses that those Israelites who had angered Him through their lack of faith would not see the Land that He had sworn to their forefathers, but that Caleb,[33] because he had followed God wholeheartedly, would enter the Land (Num 14:24), and his off-spring would possess it.

We may well ask why the ten spies who gave a negative report were punished so severely by God when they apparently did the best that they could and presented what seems to be an honest report. Moreover, in a democratic society the majority – in this case ten versus two – should have prevailed, as we see in the traditional exegesis of the scriptural phrase (Exodus 23:2): אחרי רבים ("follow a multitude"), as formulated in the rabbinic dictum (*b.Ber.* 9a): "Where there is a controversy between an individual and the many, the halakhah follows the many." Consequently, the rabbis (*b.B.Meṣiᶜa* 59a) insisted that even if a heavenly voice declares that the law is in accordance with the minority, the view of the majority must prevail.[34] One guesses that Philo himself, the aristocrat who led the Alexandrian Jews, was similarly critical of the possible attempt of the masses to assert their power. As one who looked upon Plato as "most sacred" (*Quod Omnis Probus Liber Sit* 13), it should not be surprising that Philo viewed the ideal form of government as one that was in the hands of a philosopher-king who held a status of unquestioned superiority over his subjects. "In his material substance," he says,[35] a king is equal to every man, but in the power of his authority and rank he is like the God of all, for there is nothing on earth that is higher than he." Elsewhere (*De Specialibus Legibus* 4.46-47) he denounces the view that one should be impressed by the fact that a view is held by many. "Some people," he says, "suppose that what the many

33 At this point God mentions Caleb alone because it was he who (Num 13:30) silenced the people toward Moses.

34 The question might well be raised whether God was justified in deciding that the entire multitude should be condemned to die in the desert when all that they had done was to accept the majority report of a committee, whether appointed by God, Moses, or themselves. A clue to the answer may be seen in the fact that whereas the Bible (Num 14:1) says that upon receiving the report of the majority of the scouts the people wept, Josephus (*Ant.* 3.306) says that they wept, together with their wives and children. In the biblical version, God angrily protests that the Israelites do not have faith in Him despite all the miracles that He has performed for them (Num 14:11). Josephus (*Ant.* 3.306) is more sarcastic in stating that the people acted as though God had helped them not at all with action but had only promised them with words.

35 Fragments (Richter 6.235-36; Mangey 2.673).

think right is lawful and just, though it be the height of lawlessness. But they do not judge well, for it is good to follow nature, and the headlong course of the multitude runs counter to what nature's leading would have us do. So," he adds, alluding, one may surmise, to his own experience with the masses, "if some people collect in groups or crowded assemblages to give trouble, we must not consent to their debasing of the long-established and sterling coinage of civic life."[36]

Philo, nevertheless, omits totally the dialogue between Moses and God, in which God threatens to annihilate the Israelites and in which Moses pleads with God to forgive them.[37] Apparently, Philo was troubled theologically by the fact that God did not respect the will of the majority, a principle (Exod 23:2) at the heart of Jewish law, as we see, for example, in the famous incident (*b.B.Meṣiᶜa* 59b) in which Rabbi Eliezer did not respect such a majority vote and, as a result, was excommunicated.[38] To say the least, this seems to reflect badly on God and appears to indicate that Moses is more merciful than He.

In the episode that follows (Num 14:40-44), the Israelites, confessing that they had sinned, seek, against the advice of Moses, to make amends by attacking the Amalekites and the Canaanites. However, the Amalekites and the Canaanites inflict a major defeat upon them. In Josephus' version (*Ant.* 4.1-8) the Israelites think that Moses is busily arranging for them to remain without means

36 Philo describes the form of government in which the multitude has supreme power as ochlocracy, which he characterizes (*De Opificio Mundi* 171, *De Somniis* 2.287, *De Virtutibus* 180) as the worst of all forms of government, as the very counterfeit of democracy, which is the best of them (*De Agricultura* 45), and as the offspring of anarchy (*De Agricultura* 46), and where injustice and lawlessness rule (*De Confusione Linguarum* 108). In language similar to that which he uses in his characterization of Korah's revolt, he states that ochlocracy is produced by disorder and covetousness (*De Decalogo* 155). He describes the pogrom in Alexandria in the year 38 as having been carried on by people who wielded the weapon of mob rule (ὀχλοκρατία, *In Flaccum* 65). Indeed, Philo (2.277), as it were, draws a moral, namely that the revolt of Korah illustrates what happens when subjects attack their rulers "to confound that most excellent promoter of the common weal, order. Likewise, Philo, in his essay *De Fuga et Inventione* 145, emphasizes the philosophic point that Korah had aimed to overthrow order (τάξιν), "the most beautiful thing in human life," rather than the political point that Korah had sought to overthrow Moses' commonwealth.

37 In Josephus' version (*Ant.* 3.310), however, Moses and Aaron, in an extra-biblical addition, instead of panicking, show their compassion for the people, their ability to analyze the cause of this depression, and their own true leadership by supplicating God to rid them of their ignorance and to calm their spirits.

38 For the considerable literature on this passage see Gedaliah Alon, *The Jews in Their Land in the Talmudic Age (70-640 C.E.)*, trans. Gershon Levi (2 vols.; Jerusalem: Magnes, 1984) 2:467-69; Haim H. Cohn, *Human Rights in Jewish Law* (New York: Ktav, 1984) 119-20; Louis Finkelstein, *The Pharisees: The Sociological Background of Their Faith* (2 vols.; Philadelphia: Jewish Publication Society, 1938) 1:78-79; R. Travers Herford, *The Pharisees* (New York: Mac-

so that they will always be dependent upon his help, and therefore they seek to prove that even without Moses' zeal they will overcome the enemy. They assert that God looked after them not because of His regard for Moses but because of His regard for their ancestors. In effect, they look upon God, not Moses, as their general. Philo omits this entire episode, presumably because of the very delicate question raised here by the Israelites, namely whether the Israelites should look to God or to Moses as their general.[39]

Summary

Philo's version in *De Vita Mosis* of the episode of the spies, though unusually brief, contains an unusual number of additions, subtractions, and modifications. Whereas he allegorizes in most of his other essays, he avoids this in *De Vita Mosis* because his main audience consisted of non-Jews, who would have had difficulty understanding it.

Philo places his version immediately after the Israelite victory over the Amalekites in order to stress Moses' role as a great general who skillfully plans for the defeat of the Canaanites. He elevates the role of Moses, since it is Moses' idea, rather than God's or the Israelites', to send spies. As to why Moses is not blamed for the failure of the mission, Philo declares that it is the spies who should be blamed for their disunity.

In a remarkable addition, Philo's Moses, using his own judgment in apparently independently questioning God's promise, tells the spies that they should investigate the fertility of the land, since if it should turn out that the land is poor it would be foolish to risk conquering it.

Philo's Moses appoints twelve spies, an even number, rather than an odd number that would have indicated a majority, because he stresses the importance of unanimity. He does not give the names of the spies in *De Vita Mosis* because he seeks to keep the focus on Moses and his qualities of leadership.

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millan, 1924) 109; Shamai Kanter, *Rabban Gamaliel II: The Legal Traditions* (Chico: Scholars Press, 1980); Joel Roth, *The Halakhic Process: A Systematic Analysis* (New York: Jewish Theological Seminary of America, 1986) 123-24; Peter Schäfer, *Studien zur Geschichte und Theologie des rabbinischen Judentums* (Leiden: Brill, 1978) 200-1; Ephraim E. Urbach, "Self-Isolation or Self-Affirmation in Judaism in the First Three Centuries: Theory and Practice," in E. P. Sanders, A. I. Baumgarten, and Alan Mendelson, eds., *Jewish and Christian Self-Definition*, vol. 2 of *Aspects of Judaism in the Greco-Roman Period* (Philadelphia: Fortress, 1980) 415, n. 39; Dov Zlotnick, *The Iron Pillar – Mishnah: Redaction, Form, and Intent* (Jerusalem: Daf-Noy, 1988) 195.

39 On Josephus' interpretation of the episode of the spies see my "Josephus on the Spies (Num 13-14)," *Internationales Josephus-Kolloquium Paris 2001, Münsteraner Judaistiche Studien* 12 (2001) 22-41.

He avoids mentioning the change of Hoshea's name to Joshua because there is reason to think that such changes might be ridiculed by his predominantly non-Jewish audience.

It is likewise the fear of embarrassment that leads Philo to omit Moses' instruction to the spies to take from the fruit of the land of Canaan, since this might well be regarded as theft.

The fact that, according to Philo, all the Israelites accompanied the spies as they set out on their mission would serve to justify the divine punishment inflicted on all the Israelites.

In apparent answer to the criticism that the spies did their work too quickly and superficially, Philo deliberately adds that they stayed on in order to get a more accurate view. This care on the part of the spies is a tribute to Moses, who had selected them.

Philo, drawing undoubtedly upon his own experience as a leader of the Alexandrian Jewish community, stresses, in an extra-biblical addition, that even before they returned the spies had differences of opinion, though they did not wish that their disputes should produce dissension among the masses.

Philo avoids mentioning the exaggerations that the spies reported in describing the size of the Canaanite inhabitants, since he realized that such exaggerations would be viewed with skepticism by his non-Jewish readers and thus presents a more nuanced majority report that will explain why the people gave it credence.

We are struck, in the biblical account, by Moses' silence in the face of the report of the spies, perhaps because he felt ambivalent about stifling a majority; but Philo's Moses has disdain and indignation for the masses.

Philo omits totally the dialogue between Moses and God in which God threatens to annihilate the Israelites and to start a new people with Moses himself, in which Moses pleads with Him, apparently because such an attitude would appear to be counter to respect for the will of the majority and because Moses would appear to be more merciful than God.

Philo omits the episode that follows, in which the Israelites, looking to God to aid them, seek to make amends by attacking the Amalekites and the Canaanites only to suffer a major defeat. Philo omits this passage because it raises the question whether the Israelites should look to God or to Moses for leadership.

In summary, Philo in his version is particularly concerned to emphasize the qualities of Moses as a military leader and his independence of judgment, to stress the importance of unanimity, and to answer charges against Moses that might have arisen in the minds of the audience, which, in *De Vita Mosis*, consisted primarily of non-Jews.

Distancing and Bringing Near

A New Look at Mishnah Tractates *ᶜEduyyot* and *ᵓAbot*

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This paper looks at two anomalous tractates of the Mishnah, *ᵓAbot* and *ᶜEduyyot*, and suggests that insight may be gained into the purpose and meaning of each of these tractates by analyzing them in relation to each other. I begin by focusing on the story of Akavya ben Mehalalel in *m.ᶜEduyyot* 5:6–7 and its connection to themes and motifs that appear at the beginning and end of the tractate. I suggest that the story encapsulates the central concerns of *m.ᶜEduyyot*: rupture in the transmission of Torah and the attendant loss of Torah, fragmentation of the community as a result of that loss, and the challenge of shaping a cohesive community without expelling dissident members.

I go on to show that these same concerns can be seen to underlie fundamental characteristics of *m.ᵓAbot*, but that *m.ᵓAbot*, in contrast, draws a portrait that denies the rupture, fragmentation, and exclusiveness that are in the foreground of *m.ᶜEduyyot*. Further, I consider both the opening passage of *m.ᵓAbot* and the concluding passage of *m.ᶜEduyyot* as well as the teachings of Akavya in those two tractates in comparison with the early tradition in *m.Ḥagigah* 1:8–2:2. I argue that the ethical/religious teaching attributed to Akavya in *m.ᵓAbot*, which I show to be central in theme to the core teachings of the miscellaneous section of *m.ᵓAbot*, is designed to offer an alternative basis of the religious community to the bases that are seen as fragmenting, exclusive, and dangerous in *m.ᶜEduyyot* and *m.Ḥagigah*.

Anyone who has been involved in forming a community of any sort knows that such an endeavor, no matter how inclusive the community might aspire to be, entails the drawing of boundaries and, of necessity, the exclusion of some people from membership. Some communities are formed as self-consciously exclusive groups and draw the boundaries of membership narrowly and clearly, while others are formed with the intent to include a wide variety of members and may have boundaries that are both broader and less clearly demarcated. But, ultimately, every community is based on some range of shared values, practices, beliefs, and commitments, and thus every community explicitly or implicitly shuts its gates in the face of those who do not share all or some of these key elements.[1]

1 For the metaphor of locked gates for inclusion in, or exclusion from, the community, see

This article looks at two anomalous tractates of the Mishnah – *ᶜEduyyot* and *ᵓAbot* – and suggests that we might read these two tractates in relation to each other as addressing the challenges of forming a community – a community that shares commitments and yet seeks, as much as possible, not to exclude those who would be included and whose inclusion enhances the life of the community;[2] a community that asserts its continuity with the past in the face of a consciousness of the rupture of the tradition;[3] a community that can incorporate multiplicity without succumbing to the threat of fragmentation.[4]

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m.ᶜEd. 5:6, discussed below. For an example of a self-consciously inclusive community closing itself off to a would-be entrant, see the *aggadah* in *b.Ber.* 27b–28a; the community that reforms itself by removing the doorkeeper ends up bolting its doors to keep out the servants of Rabban Gamaliel, who is seen as threatening the redefined community. See Devora Steinmetz, "Must the Patriarch Know ʻUqtzin? The Nasi as Scholar in Babylonian Aggada," *AJS Review* 23 (1998) 163–90.

2 *Aggadot* about R. Eliezer, particularly as they appear in the *Bavli*, stress that excommunication is a loss not only to the person who loses membership in the community but to the community itself. See *b.Sanh.* 68a – the loss of the person is the loss of his ability to transmit the Torah that he embodies; compare *b.B.Meṣiᶜa* 59b – the dispute with R. Eliezer and the expulsion that follows leave their mark both on the *bet midrash* (whose walls are still leaning) and on the community (which loses its leader, Rabban Gamaliel). This perspective on the loss to the community when a member is expelled fits with the *Bavli*'s emphasis on open discourse as that which both allows for inclusion of diverse members and supports the growth of Torah itself. See Steinmetz, "Must the Patriarch," and see notes 3 and 15, below, on different evaluations of *maḥloqet* and on different understandings of why Akavya was excommunicated and why R. Eliezer was excommunicated.

3 Rupture of the tradition is closely related to loss of Torah and to unresolved questions of law; see, for example, *b.Tem.* 16a – in the wake of Moses' death many *halakhot* are forgotten and many new doubts about the law arise. These, in turn, constitute the material about which there may exist a multiplicity of viewpoints. This multiplicity, *maḥloqet*, is often evaluated negatively, not only because it leads to disunity within the community (or is itself a reflection of a problem already there within the community – see the sources about the students of Hillel and Shammai discussed in n. 109, below), but because it reflects the fact that the community has become distant from the divine source of truth. On the other hand, especially in the *Bavli*, multiplicity of viewpoints is sometimes seen positively, both as a generative force (see, for example, the discussion of *b.Ber.* 27b–28a in Steinmetz, "Must the Patriarch," and see n. 47, below) and as a sign of active engagement in seeking and generating truth (see, for example, *b.B.Meṣiᶜa* 86a, where God participates in halakhic debate). This may correlate with the often-noted difference between the *Bavli* and Palestinian sources as to the relative value of *sinai* and *ʻoqer harim*; see Shlomo Naeh, "*ʻAl mivnim shel zikaron (vetavniyot shel teqst) besifrut ḥazal*," forthcoming in *Meḥqerei Talmud* 3, n. 28 and the literature cited there, and see the discussion at nn. 192–93 of texts relating to the art of memory occuring predominantly in Palestinian sources. See further n. 15, below.

4 Naeh traces the word *maḥloqet* in tannaitic and later sources and finds that the word almost always connotes fragmentation into groups in tannaitic sources, while amoraic and later sources use the word mostly in the secondary sense of "dispute." He finds that tannaitic sources do not exhibit concern with halakhic controversies per se, but rather with the problem of

Much of what will be suggested here is bound up in areas both obscure and controversial. I will mention just a few such areas: the nature and origins of the Mishnah in general, and of each of the particular tractates under discussion in particular; the degree to which we should relate to a tractate of the Mishnah as a redacted document with a distinctive program and how we factor in our awareness of successive or cumulative redactions; the place of these two tractates within the Mishnah and the relationship between individual tractates and the larger corpus of the Mishnah; the relationship between the Mishnah and the Tosefta (or, in the case of *ʾAbot*, the complicated relationship between *m.ʾAbot* and *ʾAbot deRabbi Nathan*[5]) and how much we can use the Tosefta to supplement our understanding of the Mishnah, either by filling in blanks or by highlighting alternative choices made in the redaction of the Mishnah. Beyond these literary questions, also, there is a range of historical questions about the community within which the Mishnah was produced as well as the earlier communities from which specific teachings in the Mishnah emerge or on which the Mishnah comments.

Rather than beginning by taking a position on each of these difficult questions, I will take relevant questions into account as they arise in the course of this study. Elements of my argument might, indeed, make some contributions to the debates about several of these critical issues. But the main purpose of this article is to make a case that looking at *m.ʿEduyyot* and *m.ʾAbot* in juxtaposition to each other enables us to come to new insights about each of these distinctive tractates and that, further, we might see *m.ʾAbot* as responding to the problems foregrounded in *m.ʿEduyyot*, perhaps even as responding to *m.ʿEduyyot* itself.

Akavya ben Mehalale'el

I want to take as my starting point a *mishnah* that appears in the middle of *m.ʾAbot* – *m.ʾAbot* 3:1. This *mishnah* appears at a significant place in the tractate. As many have pointed out, *m.ʾAbot* has three main sections.[6] The first,

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fragmentation of the community into separate groups. See "*ʿAsei libkha ḥadrei ḥadarim: ʿIyun nosaf bedivrei ḥazal ʿal hamaḥloqet*," in Avi Sagi and Zvi Zohar, eds., *Meḥuyavut yehudit mitḥadeshet: ʿAl ʿolamo vehaguto shel David Hartman* (2 vols.; Shalom Hartman Institute and HaKibbutz Hame'uḥad, Jerusalem: 2001) 2:851–76. See nn.37, 39, 56, and 109, below.

5 This is not to suggest that the relationship between *ʾAbot deRabbi Nathan* and *m.ʾAbot* is the same as that between Tosefta and Mishnah, but rather that parallel materials within these pairs of texts raise similar kinds of questions. For the relationship between *ʾAbot deRabbi Nathan* and *m.ʾAbot*, see most recently Menahem Kister, *Iyunim be'Abot deRabbi Natan* (Jerusalem, The Hebrew University Department of Talmud and Yad Izhak Ben-Zvi, 1998) pp.117–38.

6 For each of these three sections, there is a different relationship between the text of *m.ʾAbot* and *ʾAbot deRabbi Nathan*, as noted by Solomon Schechter, *Masekhet Avot deRabbi Natan*

consisting of Chapters One and Two, traces the transmission of Torah from Moses/Sinai down through the dynasty of the patriarchal family, on the one hand, and Rabban Yoḥanan ben Zakkai and his students, on the other hand.[7] The second section begins in Chapter Three with a collection of miscellaneous teachings, the order of which has, for the most part, defied explanation.[8] The first sage whose teaching is cited in this collection is Akavya ben Mehalalel, an obscure sage who appears only rarely in tannaitic sources.[9] In fact, the main source in which Akavya appears and which contains several of his teachings is *m.ᶜEduyyot*, where Akavya also appears near the middle of the tractate.[10] While *m.ʾAbot* gives Akavya pride of place in the section of teachings of miscellaneous "fathers,"[11] *m.ᶜEduyyot* raises the possibility that Akavya be considered an *ʾav* but shows him to have been rejected because of his teachings:

(Vienna: Ch. D. Lippe, 1887) pp. xvi–xvii as well as more recent scholars; see especially Kister, *Iyunim*, 117 and Shimon Sharvit, *Nusḥa'oteha ulshona shel masekhet Abot* (Ramat Gan: Bar Ilan Univ., 1976) 318–19. The first and possibly the second of these sections, in turn, can be broken down into earlier collections, primarily based on a comparison with *ʾAbot deRabbi Nathan*; see below for comments about the component parts of the first section in particular.

7 This will be discussed in more detail below. Note that the last two *mishnayot* of this section (2:15–16), containing teachings of Rabbi Tarfon, seem to be added based on similarity between these teachings and the teaching of Rabbi Eleazar ben Arakh in the previous *mishnah* (2:14). See Sharvit, *Nusḥa'oteha*, 319, who also points out that the second of these two *mishnayot* (2:16) is absent from many witnesses.

8 See Sharvit, *Nusḥa'oteha*, 5. See note 81, below, on possible early strata of Chapter Three and on what appear to be later additions to this chapter.

9 For speculation about when Akavya might have lived, see Zacharias Frankel, *Darkhei hamishnah* (Warsaw: M. Y. L. Tsaylingold, 1923) 58; Jacob N. Epstein, *Mevo'ot lesifrut hatanna'im* (Jerusalem: The Magnes Press of the Hebrew Univ. and Tel Aviv: Dvir, 1957) 423; Hugo Mantel, *Studies in the History of the Sahhedrin* (Cambridge, Mass.: Harvard Univ. Press, 1961) 108–18; Anthony D. Saldarini, "The Adoption of a Dissident: Akabya ben Mehalalel in Rabbinic Tradition," *JJS* 33 (1982) 547–56; Hermann L. Strack and Gunther Stemberger, *Introduction to the Talmud and Midrash*, trans. and ed. Marcus Bockmuehl (Minneapolis: Fortress Press, 1996) 66.

10 Besides *m.ʾAbot* and *m.ᶜEduyyot*, Akavya appears in the following Mishnah and Tosefta passages: *m.Neg.* 5:3, *m.Nid.* 2:6, *m.Bek.* 3:4, *t.ᶜEd.* 2:9, *t.Bek.* 2:18–19, *t.Neg.* 1:6. All of these contain teachings identical to or related to the teachings in *m.ᶜEd.* 5:6. In addition, Akavya appears in *m.Neg.* 1:4 and *t.Neg.* 1:6, where he participates in a debate about the number of types of leprous conditions. Frankel, *Darkhei hamishnah*, 57–58, points out that, since this last does not have Akavya taking a stand about a halakhic ruling, we have no rulings of Akavya's other than those enumerated in *m.ᶜEd.* 5:6. Several talmudic sources mention Akavya's excommunication or his status as a dissenting elder; some of these will be noted below, n. 15. In addition, *Sifre Bemidbar* 105 (ed. H. S. Horowitz, 103) includes a teaching that one should not say that Akavya was excommunicated; see below, n. 23.

11 It is not clear at what point the tractate became known as *ʾAbot* and, thus, whether one can argue that the inclusion of a sage in this tractate is tantamount to considering him an *ʾav*. For a brief discussion of the question of the name of the tractate, see Alexander Guttmann, "Tractate *Abot*: Its Place in Rabbinic Literature," *JQR* 41 (1950–51) 181–93. Scholars differ over whether the term *milei de'avot* in *b.B.Qam.* 30a should be seen as referring to *m.ʾAbot*.

> Akavya ben Mehalalel testified to four things. They said to him: "Akavya, retract these four things that you have said, and we will make you an *ʾav bet din*[12] in Israel." He said to them: "Better for me to be called a fool all my days and not be made a wicked person before God even for one hour, that they not say 'He retracted for the sake of office.'" (*m.ʿEduyyot* 5:6)

The first thing we see in comparing these two passages, then, is that a sage who is rejected on account of his teachings in *m.ʿEduyyot* is included, and in fact given prominence, in the line-up of sages whose teachings are transmitted in *m.ʾAbot*. Indeed, in *m.ʿEduyyot* Akavya is rejected not only from the office of *ʾav bet din*; he is rejected, at least according to one tradition, from the community:[13] ". . . and they excommunicated him, and he died under excommunication, and the court stoned his coffin"[14] (*m.ʿEduyyot* 5:6).[15]

12 See Mantel, *Sanhedrin*, 104–6 for a review of scholarship on the meaning of this term and the terms *ʾav/ʾavot haʿolam*.

13 What exactly *nidui* entails, who enacts the *nidui*, and in relation to what community the *nidui* takes place are unclear; see below, nn. 33–36. A second opinion in the *mishnah* states that Akavya could not have been excommunicated; see the discussion of this opinion below and also n. 23, concerning the author of this tradition and parallel sources. According to this second opinion, a different person was excommunicated for casting doubt on purity of the hands. For purity of hands in relation to excommunication and group definition, see G. Leibson, "*ʿAl ma menadin*," *Shenaton hamishpat haʿivri* 2 (1975) 292–342 and the primary and secondary literature cited there; Saul Lieberman, "The Discipline in the So-Called Manual of Discipline," *JBL* 71 (1952) 199–206; and Jacob Sussmann, "*Heiqer toledot hahalakhah umegilot midbar yehudah*," *Tarbiz* 59 (1990) 11–76, nn. 208 and 211.

14 Stoning the coffin of the person who is excommunicated suggests that excommunication is a form of excision from the community that is seen to be related to the ultimate casting out of a person by execution. See William Horbury, "Extirpation and Excommunication," *VT* 35 (1985) 13–38, for a study of the relationship between excommunication, *karet*, and execution, and see Anthony J. C. Phillips, *Ancient Israel's Criminal Law: A New Approach to the Decalogue* (Oxford: Basil Blackwell, 1970) 28–32, 185–86 for the hypothesis that the word *karet* connotes excommunication and and that this replaced execution as the dominant sanction in the post-exilic community. For stoning as an expression of the community's condemnation of the person who must be removed from its midst, see Devora Steinmetz, "Crimes and Punishments, Part 1: *Mitot Bet Din* as a Reflection of Rabbinic Jurisprudence," forthcoming in *JJS*.

15 There are two significant difficulties in *m.ʿEd.* 5:6 which make it unclear why exactly Akavya is excommunicated. First, the meaning of Akavya's response to the information about Karkemit is obscure. Second, it is not clear whether we should see the excommunication as relating to that response, which it immediately follows in the *mishnah*, or whether we should see it as following Akavya's refusal to retract his four teachings, with the intervening material about the substance of those teachings and his response to the information about Karkemit constituting a parenthetical explanation of the reference to his four teachings in the first part of the story. The former approach might suggest that Akavya was excommunicated for showing disrespect toward Shemaya and Avtalyon; the latter would have him excommunicated simply for refusing to retract his teachings. The *Bavli* includes passages about Akavya as problematic for both of these reasons: *b.Ber.* 19a attributes his excommunication to disrespect toward

Why in *m.ᶜEduyyot* do Akavya's teachings lead to a distancing of this sage, while *m.ᵓAbot* includes Akavya's teaching in a prominent position? Should

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sages of the past (the *Yerushalmi* has a similar interpretation; see *y.Moᶜed Qaṭ.* 3:1/81d), while *b.Sanh.* 88a discusses why he was not executed as a *zaqen mamrei* (though this does not necessarily mean that this *sugya* sees Akavya's refusal to retract as the reason he was excommunicated). For a review of approaches to the two cruces in this *mishnah*, see Saldarini, "The Adoption of a Dissident," and also Solomon Zeitlin, "The Semikah Controversy Between the Zugoth," *JQR* NS 7 (1916–17) 499–517, n. 21.

Both Zeitlin and Saldarini see Akavya's excommunication as resulting from his refusal to retract his teachings, and both compare this set of events to the story of R. Eliezer's excommunication (for other connections between Akavya and Rabbi Eliezer, see nn. 46 and 109, below). It should be noted, though, that, while the *Yerushalmi* does seem to understand R. Eliezer's excommunication as a result of his tenacity in holding on to his position in the face of an opposing majority (*y.Moᶜed Qaṭ.* 3:1/81d), the *Bavli* presents a different interpretation of the tradition of R. Eliezer's excommunication (*b.B.Meṣᶜa* 59b). Though I cannot develop this here, I would point out two significant features of the *Bavli* narrative: first, the problem with R. Eliezer seems to have more to do with the way in which his behavior violates the norms of rabbinic discourse than with the fact that he tenaciously retains his position, as in the *Yerushalmi* narrative; second, the section of the *Bavli* narrative that describes the excommunication and its aftermath is related to the first part of the narrative in a way that makes the narrative's evaluation of the justifiability of the excommunication ambiguous. Note that it is R. Joshua who opposes R. Eliezer in the first half of the narrative, when R. Eliezer invokes supernatural support for his position, but it is Rabban Gamaliel who is set up in opposition to R. Eliezer in the second half of the narrative, which focuses on the excommunication and its terrible consequences. It is not clear that Rabban Gamaliel's opposition to R. Eliezer stems from the same concern that motivated R. Joshua in this story; it may be that we are to see Rabban Gamaliel as opposing R. Eliezer simply because he refuses to relinquish his position. This disjunction between the two halves of the story allows the narrative to affirm the need to protect the *bet midrash*'s commitment to open discourse (a stance that seems to be connected to R. Joshua in the *Bavli* – see *b.Ber.* 28b–29a and the discussion of Steinmetz, "Must the Patriarch," and note the opposition between R. Joshua's reception of new teachings and R. Eliezer's in *b.Ḥag.* 3b; see below, n. 48) without taking an affirmative stand on the subsequent expulsion of R. Eliezer (for which R. Eliezer holds Rabban Gamaliel accountable; note the intolerance of disagreement that the *Bavli* attributes to Rabban Gamaliel in *b.Ber.* 27b–28a and elsewhere, and see Steinmetz, "Must the Patriarch," n. 28 on a link between that narrative and the story of how R. Eliezer brings about Rabban Gamaliel's death in *b.B.Meṣiᶜa* 59b).

A positive or negative valuation of difference of opinion then, is related to the issue of excommunication in two ways: whether a sage can be excommunicated for holding fast to a divergent position; whether excommunication of a sage, even if necessary, is seen to have the negative result of depriving the community of the teachings of the person who has been expelled from the community (see n. 2, above) and of the generative power of discourse in a community that includes disenting voices (see n. 3, above).

Differences between the *Bavli* and other sources about dispute and dissent require a more sustained inquiry than is possible here. But it is important to point out that what is said in this article is meant to reflect the attitude toward difference of opinion in the texts discussed, and possibly in tannaitic materials or even Palestinian materials generally, and should not be understood to be commenting on other rabbinic texts which may, particularly in the case of the *Bavli*, have a different evaluation of dispute and dissent.

we look to the content of each teaching, or set of teachings, to explain this, or should we look to the difference between what might be the program of the two tractates in order to explain this? Or should we simply see the appearance of Akavya in the middle of these two tractates as a coincidence that needs no explaining? That is, he happens to appear in *m.ᶜEduyyot* because we have a tradition about his "testifying" (*heᶜid*)[16] to teachings, and he happens to appear in *m.ʾAbot* because his teaching fits in a collection of ethical teachings by early sages.

I want to suggest that the appearance of Akavya in the middle of these two tractates is neither incidental in relation to each of the tractates nor coincidental in relation to the pair of anomalous tractates, *ᶜEduyyot* and *ʾAbot*. Rather, I want to show that the tradition about Akavya is central to *m.ᶜEduyyot* not only in its placement at the center of the tractate, but in that themes and motifs that appear in the Akavya passage appear in other key places in the tractate.[17] I want to suggest, then, that we look to the Akavya story as one of the keys to the meaning of *m.ᶜEduyyot* – that we can ask what is the nature or core ideas of *m.ᶜEduyyot* and of the teachings that it includes such that the tractate contains at its center a narrative about the exclusion of a sage from a position of leadership and, according to one tradition, from the community. Further, I want to suggest that the inclusion of Akavya's teaching in *m.ʾAbot* is a statement that ought to be read in reference to the tradition in *m.ᶜEduyyot* about Akavya's *exclusion* – and that this, in turn, tells us something about the nature or core ideas of *m.ʾAbot* and of the teachings that *it* includes which we should see borne out throughout that tractate.

ᶜEDUYYOT

In order to demonstrate the centrality of the Akavya story to *m.ᶜEduyyot* not only in location but also in relation to theme and motifs, we need to look at the continuation of the tradition about Akavya in *m.ᶜEd.* 5:7:

> In the hour of his death, he said to his son: "My son, retract the four things that I used to say." He said to him: "But why did you not retract?" He said to him: "I heard from the many, and they heard from the many; I stood on my tradition [literally, "hearing"], and they stood on their tradition. But you have heard from the individual and from the many;

16 On the sections of *m.ᶜEduyyot* that include *ᶜeduyyot* (testimonies) and other sections of the tractate, see Epstein, *Mevo'ot*, 429–43; see 443–44 for an alternative meaning of the name of the tractate.

17 Saldarini suggests that the Akavya passage is central to *m.ᶜEduyyot*'s concern with "unity and diversity" but develops this only in relation to the general concern of the tractate to "gather and unify . . . diverse traditions" reflected in *m.ᶜEd.* 1:4–6.

> better to set aside the words of the individual and hold on to the words of the many."
>
> He said to him: "Father, commend me (*paqed ᶜalai*)[18] to your colleagues (*leḥaverekha*)." He said to him: "I will not commend." He said to him: "Perhaps you have found in me a fault?" He said to him: "No; your deeds will bring you near, and your deeds will distance you."

Several elements here recall passages toward the beginning of the tractate as well as the passage with which the tractate concludes.[19] The term "to stand on," that is to refuse to retract a teaching, appears in *m.ᶜEd.* 1:4, after the first collection of teachings in the tractate, in which Shammai and Hillel disagree and the Sages have yet a third opinion:

> And why do we mention the words of Shammai and Hillel to no purpose? To teach the generations to come that no one should stand on his words, for behold, the fathers of the world (*ʾavot haᶜolam*) did not stand on their words.

18 My rendering of this phrase follows standard translations. It is unclear exactly what his son is requesting of Akavya. For the word *pqd*, see below, n. 33. See Albeck, *Shishah Sidre mishnah: Seder Neziqin* (Jerusalem: Mossad Bialik and Tel Aviv: Dvir, 1953) 483 for a different version of part of this interchange between Akavya and his son and for uses of *pqd* in rabbinic texts; note also the use of *pqd* in a story about exclusion/inclusion in *b.Hor.* 13b. See also the term *ṣvh ᶜal-* in 2 Sam 14:8.

19 For a discussion of literary features in the Mishnah with extensive references to earlier scholarship, see Avraham Walfish, "*Shiṭat ha'arikhah hasifrutit bamishnah 'al-pi Masekhet Rosh ha-Shanah*" (Ph. D. dissertation; Jerusalem: Hebrew Univ., 2001) and "The Poetics of Mishnah," in Jacobs Neusner and Alan J. Avery-Peck, eds., *The Mishnah in Contemporary Perspective*, (2 vols.; Leiden: E. J. Brill, in press). Walfish suggests criteria for identifying literarily significant occurences of words, *Shiṭat ha'arikhah*, 19–20. See also app. 6, 353–61, on the frequency of wordplay in the Mishnah and other classical texts; on examples of wordplay in which different occurences of the word have different primary meanings; and on cases in which occurences of words create an *inclusio*.

In addition to the recurring elements discussed below, note the following possible wordplays between *m.ᶜEd.* 1:1 and the Akavya passage, pointed out by Walfish (personal communication): *pqd* appears in Akavya's son's request to his father (*paqed 'alai*) as well as in the first of Akavya's teachings (*se'ar hapequdah*) and also in the dispute between Hillel and Shammai in the first *mishnah* (*mipeqidah lifqidah*); the word *sha'ah* appears in Akavya's response to his colleagues (*sha'ah 'achat*) as well as in the opposing position in the dispute between Hillel and Shammai in the first *mishnah* (*dayan sha'atan*). Albeck, *Seder Neziqin*, 475, suggests that *m.ᶜEd.* 1:1 originated in *m.Nid.* 1:1, unlike *m.ᶜEd.* 1:2–3 which originated in *m.ᶜEduyyot*. If so, then we might see *m.ᶜEd.* 1:1 and the Akavya passage as components of a fairly late layer of *m.ᶜEduyyot* that serve, along with other passages discussed here, to transform earlier portions of the tractate (which might, indeed have been generated for a purpose such as that suggested by Naeh, discussed below in nn. 40, 43, and 44) into the tractate as we know it, with the concerns discussed in this article central to the tractate's final form.

This explanation of why the opinions of Shammai and Hillel are mentioned recalls – in its mention of "fathers" and "generations to come" – the later *mishnah* where Akavya (the *father* who cannot be appointed an *ʾav bet din*[20]) explains to his son ("the generation to come") that he was justified in standing on his words, because his teaching was a tradition that he heard from the many and that was not to be relinquished in favor of an alternative tradition that was heard from the many. His son, though, ought not stand on his words, because he received his father's tradition from a single individual, and such a tradition must be relinquished in favor of a tradition received from the many.[21]

This notion of teachings received from an individual and from the many, mentioned by Akavya in his explanation to his son, comes up explicitly in the next two *mishnayot* at the beginning of the tractate, *m.ʿEd.* 1:5–6:

> And why do they mention the words of the individual among the many, since the law is only in accordance with the words of the many?... Said Rabbi Judah: If so why do they mention the words of the individual among the many to no purpose?[22] So that, if a person say: "Thus I have received (*mequbal*)," he should say to him: "You heard in accordance with the words of so-and-so."

It is noteworthy that, in the response that is given to the person who claims to have a received a tradition, the verb is changed from "received" to "heard." As we shall see later, the word "received" implies an authentic tradition transmitted from generation to generation, while "heard" does not have this connotation. The response that he has "heard" his teaching, then, subtly suggests that

20 Akavya is not referred to as his son's "father" in *m.ʿEd.* 5:7, though that relationship is implied. He has, however, been offered the position of *ʾav bet din* in 5:6. The fact that *ʾav bet din* is a technical title does not undermine the notion that this term resonates with other occurences of the word "father" in *m.ʿEduyyot*. In fact, one can see the occurences of "father" in 1:4 and 8:7 (discussed below), together with Akavya's appearance as an actual father in conversation with his son in the *mishnah* following the appearance of *ʾav bet din*, as resurrecting the idea of father in a term that has become a dead metaphor (my thanks to A. Walfish for bringing this point to my attention; see also Mantel, *Sanhedrin*, 1–6, n. 34 on the idea behind terms such as *ʾav bet din*, *ʾavot haʿolam*, and the Roman *pater patriae*). This calling up of a forgotten meaning through association with other occurences of the word or idea of father can, in fact, be seen as underscoring the significance of the motif. References to fathers and sons or coming generations, it should be noted, form an *inclusio* (see preceding note) in *m.ʿEduyyot*: the occurrence of this same motif in the Akavya passage highlights the centrality of this passage.

21 Avraham Aderet, "*Masekhet ʿEduyyot keʿedut ledarkhei hashiqum vehatekumah leʾachar ḥurban bayit sheni*," in Aharon Oppenheimer, Isaiah Gafni, Mehahem Stern, eds., *Yehudim veyahadut biymei bayit sheni, hamishnah, vehatalmud* (Jerusalem: Yad Izhak Ben Zvi, 1993) notes the thematic connection between *m.ʿEd.* 1:4 and Akavya's instructions to his son.

22 The relationship between Rabbi Judah's question in 1:6 and the previous two *mishnayot* is difficult; see Albeck, *Seder Neziqin*, 476.

the teaching does not have the weight of an authentic tradition. But it should also be noted that the motif of the one and the many and the notion that one should relinquish a tradition received from an individual echo the explanation of Akavya to his son in 5:7. In essence, Akavya later in the tractate instructs his son in accord with Mishnah 1:6's prescription for dealing with this issue. Or, reading the beginning of the tractate with the later passage in mind, we might even see Rabbi Judah's dictum in Mishnah 1:6 as a generalized teaching reflecting the deathbed instructions that Akavya gives to his son.[23] Akavya, then, whose teachings exclude him from the community or, at least, from the position of *ʾav bet din*, ends up, as father, being the teacher of a central tenet of the tractate which puts the story of his exclusion at its center! This tenet is designed to allow for legal decision-making that the entire community must accept; even the person transmitting the divergent teaching must give in in the face of an opposing majority decision.[24] We will return shortly to the issue of community cohesiveness in the face of potentially fragmenting dispute, but first we will look at links between the Akavya story and the conclusion of the tractate, *m.ʿEd.* 8:7:

> Rabbi Joshua said: I have received (*mequbal*) from Rabban Yoḥanan ben Zakkai, who heard from his master, and his master from his master, a *halakhah* to Moses from Sinai, that Elijah is not coming to render impure and to render pure, to distance and to bring near, but rather to distance those who have been brought near by force and to bring near those who have been distanced by force. The family of Bet Tzereifa was on the

23 Note that it is R. Judah who objects to the tradition that Akavya was excommunicated in *m.ʿEd.* 5:6. R. Judah also asserts, in *m.ʿEd.* 8:7, that Elijah comes only "to bring near" (but see Epstein, *Mevo'ot*, 442, on R. Judah's position in *t.ʿEd.* 3:4 and in the version of *m.ʿEd.* 8:7 in MS Munich). See Frankel, *Darkhei hamishnah*, 58, and Jacob N. Epstein, *Mavoʾ lenosaḥ hamishnah* (Jerusalem: Magnes Press of the Hebrew Univ., 2000) 1185, about whether Rabbi Judah in *m.ʿEd.* 5:6 should be identified with R. Judah ben Beteira (note R. Judah ben Beteira in *m.ʿEd.* 8:3, closely related to 8:7, and see below; see Meir Friedmann [Ish Shalom], *Seder Eliyahu Rabbah veSeder Eliyahu Zuta* [Vienna: Carl Fromme, 1902] 23–24 and n. 2, and Epstein, *Mevo'ot*, 438, n. 111), who asserts in *Sifre Bemidbar* 105 (ed., Horovitz, 103) that one ought not say that Akavya was excommunicated. See Gedaliah Alon, "*Mehilkhot rishonim*," *Tarbiz* 9 (1937–38) 278–83, n. 4 for the idea that R. Judah (ben Beteira?) is opposed to the excommunication of sages. See also *y.Roš Haš.* 1:6/57b, cited by Alon, for the response of Rabbi Judah (haNaḥtom – but see *b.Roš Haš.* 22a) to the suggestion that Rabbi Akiva might have been excommunicated, a response that is almost identical to the statement of R. Judah in *m.ʿEd.* 5:6. See the appendix to this article, examples 2 and 6.

24 While *m.ʿEd.* 1:6 and 5:7 teach that one must relinquish the position of an individual in favor of the position of the many, how we should evaluate the tractate's stance on whether the individual himself must retract his position in the face of an opposing majority position is less clear.

> other side of the Jordan and Ben Tzion distanced it by force; and another one was there, and Ben Tzion brought it near by force – such as these Elijah is coming to render impure and to render pure, to distance and to bring near.
>
> Rabbi Judah says: To bring near but not to distance.
>
> Rabbi Simeon says: To reconcile *maḥloqet*.[25]
>
> And the Sages say: Not to distance and not to bring near, but to make peace in the world, as it says: *Behold, I am sending you Elijah the prophet. . . . And he will return the heart of the fathers to the children and the heart of the children to their fathers.* (Malachi 3:23–24)

Questions of purity and impurity have occupied much of this tractate,[26] but the issue of "distancing and bringing near" has only come up, in legal discussion, in the final chapter of the tractate, in the sense of marriageability.[27] In *m.ᶜEd.* 8:2 we hear of a young girl who was distanced by her family on suspicion that she was "rendered impure" while in captivity among the Gentiles.[28] In the next *mishnah* there is a testimony of Rabbi Joshua and Rabbi Judah ben Beteira that the widow of an *isa*[29] is marriageable to priests, followed by a statement that *isa* is fit to render impure and to render pure, to distance and to bring near. To this testimony, Rabban Simeon ben Gamaliel[30] responds that, while the testimony is accepted, there is nothing to be done, for Rabban

25 See below, n.37, on the meaning of *maḥloqet* in this passage.

26 See Aderet, "*Masekhet Eduyot*," for a breakdown of the areas of law represented by the teachings in *m.ᶜEduyyot*.

27 Note, though, the juxtaposition of marriage and purities in *m.ᶜEd.* 4:8, in the context of disputes between Bet Shammai and Bet Hillel that could potentially fragment the community; see below, n.109. Friedmann, *Seder Eliyahu Rabbah*, 23, n.2, points out the use of purity language in the context of marriageability in *m.ᶜEd.* 8:3 and *t.ᶜEd.* 3:2. See John Kampen, "Communal Discipline in the Social World of the Matthean Community," in Julian V. Hills, ed., *Common Life in the Early Church* (Harrisburg, Pa.: Trinity Press International, 1998) 158–74, for the juxtaposition of purity and regulations regarding marriage and sexual relations as two major issues of sectarian identification in the Damascus Document. See n.35, below.

28 For differing understandings of whether the girl was from a priestly family, see Albeck, *Seder Neziqin*, 485, and A. Aderet, "*Masekhet Eduyot*." •

29 On this term, see Albeck, *Seder Neziqin*, 485. Note that *isa* in its literal sense, meaning "dough," is the subject of the dispute between Bet Shammai and Bet Hillel with which *t.ᶜEduyyot* begins, and the word *isa* is used there. *M.ᶜEduyyot*, though, has an additional dispute between Bet Shammai and Bet Hillel before the dispute about dough, which occurs in *m.ᶜEd.* 1:2 and in which the word *isa* does not appear. See n.19 concerning the first two *mishnayot* in *m.ᶜEduyyot*. For the possibility that the literary effect of a *mishnah* might depend more on the formulation of a related *baraita* than on the formulation of the *mishnah* itself, see Walfish, *Shitat ha'arikhah*, 109, n.26.

30 Or, Rabban Gamaliel; see Aderet, "*Masekhet Eduyot*," n.67.

Yoḥanan ben Zakkai decreed not to set up courts in such cases, since the priests[31] listen to distance but not to bring near.

The final *mishnah* begins with Rabbi Joshua, one of the transmitters of the testimony in Mishnah 8:3, appealing to a tradition received from Rabban Yoḥanan ben Zakkai, the sage whose decree led to the rejection, in practice, of the testimony brought by Rabbi Joshua and his colleague. In this final *mishnah*, there is an unbroken chain of tradition teaching that, in the messianic age, abuses of power will be rectified, thus setting right membership in the group of those who may marry within the community. Rabbi Judah follows this with a teaching that inverts the practice of the priests in 8:3. While the priests rule only to distance, but never to bring near, Elijah will come to bring near, but not to distance.[32]

While in *m.ᶜEd.* 8:7 the question of distancing and bringing near seems to refer to marriageability within the community, as it does in the *mishnayot* earlier in this chapter, these words also echo Akavya's dying words to his son in 5:7, when his son asks his father to commend him to his colleagues: "Your deeds will bring you near, and your deeds will distance you." We don't know exactly what Akavya's son is asking him to do; who are Akavya's colleagues, what kind of commendation is needed, and what would it mean to be brought close to this group? The root *pqd* and the roots *qrv* and *rḥq* are used in relation to different groups[33] as well as to different dimensions of group membership[34]

31 Is the reference to a formal body of priests, as in *m.Roš Haš.* 1:7, or does the statement simply mean that the priestly community will not accept this determination?

32 See Aderet's discussion of *m.ᶜEd.* 8:7 in relation to 8:2–3 as evidence of conflict between the sages and the priests in "*Masekhet Eduyot*." See below on priests and sages in *ᵓAbot*.

33 See Lieberman, "The Discipline," and Göran Forkman, *The Limits of the Religious Community* (Lund: Gleerup, 1972) 54–55 and 104 and nn.105 and 107–8 on p.113 for uses of these words in rabbinic and Qumran texts. *Qrv* is used in the context of becoming a *ḥaver* in *y.Demai* 2:3, 23a. It is used repeatedly for membership in (or re-admission into) the *yaḥad* in *Serekh haYaḥad* (1QS). See also the use of Isa 57:19, *Peace, peace for the distant one and for the near one*, in reference to those who are excluded from or included in the community of *Christians* in Eph 2:11–22. Forkman points out the use of *pqd* in CD 15:8 and in the *ᵓish hapaqid* of 1QS; note especially 1QS 6:14–23, where both *pqd* (6:14 – *haᵓish hapaqid*; 6:21 – *yiphqodehu*) and *qrv/rḥq* appear. Note also *vayipaqdu* in Neh 7:1, in a passage that introduces the registering of community members (on the meaning of [*le-*]*hityaches* in Neh 7:5 and Ezra 8:3, see Moshe Weinfeld, *The Organizational Pattern and the Penal Code of the Qumran Sect* [Göttingen: Vandenhoeck und Ruprecht, 1986] 21, n.80).

34 See S. Lieberman, "The Discipline." *Qrv/rḥq* is used in the context of *excommunication*, besides in *m.ᶜEd.* 5:7, in *m.Mid.* 2:2 and *y.Moᶜed Qaṭ.* 81a, 3:1 (in relation to R. Eliezer, who anticipates being "brought near," and in a discussion introduced by the citation of *m.ᶜEd.* 5:6). It is used to signify *conversion*, or *becoming a member* of the community, in many sources, including *y.Qidd.* 4:1, 65b (see n.8 in Lieberman, "The Discipline," for the reading *uṣrikhin qiruv paᶜam sheniyah*), *Mekilta deRabbi Ishmael, Amaleq 1* (ed. S. H. Horovitz-I. Rabin, 193), *Bereshit Rabbah* 39:11 (compare *Midrash Tannaim* to Deut 33:1, where the term is used both for becoming

in texts from the Second Temple and rabbinic periods. Within the context of *m.ᶜEduyyot*, too, there seems to be a kind of conflation of, or at least blurring of distinctions between, different kinds of communities and dimensions of membership in these communities. Distancing can mean being declared unmarriageable within the community of Israel or inadmissability to the group of "colleagues," whoever they may be and whatever the nature of their group.[35]

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a member of the community [Bitya] and for the sinner rejoining the community [Reuven] — compare *Sifra* on Lev 8:2 in relation to Aaron, who has sinned in the episode of the golden calf, but here the "bringing near" implies the ability to perform the service in the Tabernacle — and see *b.Sanh.* 99a//*b.Ber.* 34b where the bringing near of those who repent is linked to Isa 57:19); see also the expression "the Holy Blessed One brought us near to his service" in the Passover Haggadah. It is used in the context of *marriage*, besides in *m.ᶜEd.* 8:2–3 and 7, in *y.Qidd.* 4:1, 65b–c, and *Bereshit Rabbah* 51:9; see also *y.Taᶜan.* 4:11, 69c (and compare *Bereshit Rabbah* 22:4 and *Echah Rabbah*, *petiḥta* 33; see the notes in the J. Theodor-Ch. Albeck edition of *Bereshit Rabbah*, 981 and see n.114, below), where *qrv* and *rḥq* are juxtaposed with the term *lavoʾ baqahal*, on which see below, n.35. In *Vayiqra Rabbah* 16:9, it is used for the *purification* of the leper in connection with an exegesis of Is. 57:19 (on this verse, see preceding note). Clearly, there is significant overlap between some of these dimensions of community membership. See also nn.101 and 103, below, on allusions to *qrv/rḥq* in relation to R. Akiva and to *Aḥer*.

35 A similar range of meanings of community and dimensions of membership characterizes understandings of the term *lavoʾ baqahal* in Deut 23:2–9. See Jeffrey Tigay, *The JPS Torah Commentary: Deuteronomy* (Philadelphia: Jewish Publication Society, 1996) 209–10 and 477–80, on the relationship between membership in a council of leaders and membership in the general community. Note, also, that the dimension of marriageability seems to define membership in the community in this biblical passage; compare Ezra 10, where marriage to outsiders must be severed in order for one not to lose membership in the community (*qahal*).

It is noteworthy that the citation of *m.Yad.* 4:4 in *b.Ber.* 28a creates a similar juxtaposition between different kinds of community and between different dimensions of membership. When the Amonite proselyte asks: *mah ʾani lavoʾ baqahal?* — paraphrasing Deut 23:4 — in the context of this narrative, a parallel is created between the general community of Jews and the world of the *bet midrash*, the inclusiveness of which is under question in this narrative. The proselyte who has already entered the *bet midrash* is bound to find admission in the *qahal*; the sage who would exclude him from the *qahal* is the same sage who had constructed an exclusive *bet midrash* and whose deposition as leader led to an opening of the doors of the *bet midrash* to whoever wanted to enter. Note that the citation of this *mishnah* comes in the context of the teaching "*Eduyot* was taught on that day, and there was no *halakhah* that had been hanging in the *bet midrash* that they did not explicate" (for other comments on this juxtaposition, see nn.47–48, below). Here, too, then, questions of membership in community are linked with *ᶜEduyyot*. For a fuller discussion of this narrative, see Steinmetz, "Must the Patriarch."

Yet another understanding of the term *lavoʾ baqahal*, and hence another dimension of membership in community, appears in Qumran texts. 1Q174 (Flor), 2–4 interprets the prohibition of entering the qahal as a prohibition on entering the Temple (see also Lam 1:10 and Ezek 44:9). See Yigael Yadin, *Megilat haMiqdash* (3 vols.; Jerusalem: Israel Exploration Society, 1977) 1:191–92, for a discussion of this passage and of passages in the Temple Scroll that prohibit proselytes from entering the Temple (see Temple Scroll 39:5–6 and 40:6 and Yadin's notes in 2:117 and 120, and see 1:143–44 and nn. for a discussion of the nature of the Temple referred to

Excommunication seems to bridge these domains, as this penalty is incurred, it would seem, through disrespect toward the demands of the colleagues, yet it takes the form, at least in principle, of expulsion from the broader community.[36] None of these categories is clear-cut, and definition of each would require much more knowledge than we now have of the social structure of the time reflected in these traditions. Nevertheless, whether focusing on definition of the entire community of Israel or on definition of a particular community of Jews that shares a set of normative beliefs, practices, and attitudes, it is clear that the issue of inclusion in and exclusion from the community is central to this tractate.

It is clear, also, that in *m.ᶜEduyyot* the issue of inclusion and exclusion is intimately related to the issue of controversy. Not only does the controversy between Akavya and the sages lead to his excommunication, but the final *mishnah* juxtaposes the issue of controversy with the issue of exclusion and inclusion. While the first two opinions in the *mishnah* have Elijah coming to rule on inclusion within the community, the third opinion has the prophet coming to reconcile *maḥloqet*.[37] Finally, the last opinion, with which the tractate

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in 1Q174); see also 224–25 for others who are excluded from the Temple or from the community. For the conflation of Temple and community in the context of a focus on membership in the community and on the authority to legislate for the community in Matthew 18 (based on a comparison between 18:18 and the "keys of the kingdom" passage in 16:18–20) and a comparison to Qumran texts, see Kampen, "Communal Discipline"; see also Eph 2:11–22, cited above, n. 33. See Alon, "*Mehilkhot rishonim*," for the idea that excommunication in the Second Temple period involved exclusion from the Temple court; he interprets R. Judah's statement – "*ʾein haʿazarah ninʿelet . . .*" (*m.ᶜEd.* 5:6) – as meaning that Akavya was allowed into the Temple courtyard and thus could not have been excommunicated. Whether or not one accepts this literal interpretation of R. Judah's statement, it should be noted that R. Judah's reference to being inside the Temple courtyard when its gates are locked does juxtapose an image of this particular dimension of community membership with whatever other dimensions of membership are denied the excommunicated individual.

36 Though this, too, is unclear – does a specific group declare one outside of that group or outside of the broader community, or does the group see those two things as identical, the group itself constituting, in its own self-image, the community? For a review of a variety of approaches to *nidui* and to the issue of identifying the group from which the person is expelled, see Forkman, *The Limits*, 101–4. On membership and expulsion from the community in post-exilic, Qumran, and rabbinic texts, see Horbury, "Extirpation and Excommunication"; Gerald Blidstein, "'Atimia: A Greek Parallel to Ezra X 8 and to Post-Biblical Expulsion From the Community," *VT* 24 (1974) 357–60; Leibson, "*ʿAl mah menadin*"; Weinfeld, *The Organizational Pattern*.

37 For *hushvu* as the antithesis of *neḥlequ*, see *b.Šhabb.* 15a, in reference to Bet Hillel and Bet Shammai (this passage is discussed in n. 109, below, concerning the proliferation of *maḥloqet*); see also the play on these words, also in reference to Bet Hillel and Bet Shammai, in *m.B.Bat.* 9:10. See n. 4, above, for Naeh's analysis of the meaning of *maḥloqet* in tannaitic and amoraic sources. Naeh, "*ᶜAsei Libkha*," n. 23, cites *m.ᶜEd.* 8:7 as one of the few tannaitic uses of *maḥloqet* that is ambiguous. See also the following two notes.

concludes, has Elijah coming to bring peace to the world, citing a prooftext about making peace between fathers and sons.[38] This reference to fathers and sons might be seen to recall the story of Akavya and his son. But, additionally, the motif of "father" echoes both the "fathers of the world" from *m.ᶜEd.* 1:4 and the offer to Akavya to be an *ʾav bet din*. Fathers and sons, then, both represent the building blocks of the general community and are a metaphor for the transmission of teachings from generation to generation. Again, peace within the broader community is juxtaposed with the ability to achieve cohesiveness in the face of potentially fragmenting *maḥloqet*.[39]

The issue of the fragmentation of Torah, in fact, seems to be at the heart of *m.ᶜEduyyot*, especially if we take into account the introductory passage in *t.ᶜEduyyot*:

38 Friedmann, *Seder Eliyahu Rabbah*, 23–25, suggests that each of the positions in the final *mishnah* is interpreting Mal 3:24 – "*He shall return the heart of the fathers to the children and the heart of the children to their fathers*" – in a different way. R. Joshua, reading the verse in the context of Mal 3:3 (compare *b.Qidd.* 71a), understands it to mean that people will have accurate knowledge of their lineage. R. Judah understands "return" as suggesting that people will be brought together, thus *leqarev*. The next opinion reads this verse in the context of Mal 3:22 – *Remember the Torah of Moses my servant* – and interprets the "return" of 3:24 as the obliteration of *maḥloqet*, both in the sense of disputes about Torah and in the sense of factionalism within the community. The sages interpret "return" as making peace among the members of the community, despite the fact that there are those who remain distant with respect to lineage.

Whether or not we see each of these positions as interpreting *He shall return...*, it does seem clear that each of the opinions in this final *mishnah* of *m.ᶜEduyyot* relates consecutively to elements mentioned in the third chapter of Malachi. The chapter begins with the notion of God sending his messenger to prepare the way (3:1) and moves on to refining and purifying the sons of Levi (3:3) – this corresponds to the first pair of opinions in the *mishnah* which have Elijah attending to distancing and/or bringing near. *Lehashvot hamaḥloqet* may correspond to *Remember the Torah* ... (3:22), as Friedmann suggests; if so, then the end of the tractate can be seen to link the issue of controversy with the problem of loss/forgetting of the tradition, the same pair of issues that is reflected in *t.ᶜEd.* 1:1, according to the standard understanding of that passage (discussed below). If this issue of *maḥloqet* is additionally reflecting an interpretation of the "return" of Mal 3:24, as Friedman suggests and as might be reflected in the paronomasia of *lehashvot* and *veheshiv*, then returning the hearts of the fathers and children (3:24) might be understood not only as corresponding with the final opinion in the *mishnah*, "to make peace in the world," but also as referring to a restoration of the forgotten or lost Torah (that which must be "remembered" – Mal 3:22; see *Sifre Devarim* 48 [ed. Louis Finkelstein, 112–13] for a parallel passage that foregrounds the issue of forgetting, mentioned also in the preceding *derashot* in that section). Such an interpretation fits with the interrelation in *m.ᶜEduyyot* of the motif of fathers and the issue of transmission of teachings.

39 This is true whether we understand *maḥloqet* in this passage as referring to the actual fragmentation of the community or to disputes that can lead to fragmentation or exclusion. Note that Naeh, "*ʿAsei Libkha*," n. 23, sees the Sages' opinion in *m.ᶜEd.* 8:7 as responding only to Rabbi Joshua's opinion, and not as related to the opinion about *maḥloqet*. While the formulation of the Sages' opinion indicates that it is directed to R. Joshua's (and R. Judah's) statement, the

> When the sages came together in the vineyard at Yavneh, they said: The time will come when a person will seek a word of the words of Torah and will not find it, from the words of the scribes and will not find it, as it says: *Behold, days are coming, says the Lord God, when I will send a famine in the land, not a famine for bread, nor a thirst for water, but for hearing the words of the Lord. And they will wander from sea to sea and from north to east; they will run to and fro to seek the word of the Lord, and they will not find it.* (Amos 8:11–12) "The word of the Lord"... – that no word of the words of Torah will resemble another. They said: let us begin from Hillel and from Shammai....[40]

Scholars differ over just about every aspect of this passage and especially about what we might glean from it about the origin of the Mishnah as a whole and *m.ᶜEduyyot* in particular.[41] I do not want to join any of those debates. It is, though, important to note that *t.ᶜEduyyot*[42] begins with the concern that Torah has been lost – "will not find it"– and that Torah has been fragmented – "that

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structure of the *mishnah* juxtaposes this opinion, about bringing peace, with the statement about *maḥloqet* that immediately precedes it.

40 See Naeh, "*ʿAl mivnim shel zikaron*," on the text and on this passage in relation to the parallel passage in *Sifre Devarim* 48 (see n. 38, above). Naeh interprets both of these passages, as well as the homily of R. Eleazar ben Azariah in *t.Soṭah* 7:11–12, as concerned with the unwieldliness of Torah that is generated by its growth through the proliferation of opinions. That is, according to Naeh, these passages are concerned about the difficulty of learning and committing Torah to memory, not about the notion that the proliferation of opinions in itself represents the forgetting of Torah, distance from the source of Torah, and, thus, the inauthenticity of the Torah that is available to the learner. It should be noted, though, that the problem in the *Sifre* is characterized as *ʾish peloni ʾoser, ʾish peloni matir, ʾish peloni metame, ʾish peloni metaher* – that is, the particular form of proliferation of Torah that is highlighted is disagreement, rather than other kinds of proliferation that could be mentioned, such as the proliferation of new cases, sub-categories of law, etc. See further nn. 43–44, below. See also the related passage in *b.Šabb.* 138b–39a.

41 See especially Epstein, *Mavoʾ*, pp. 422–44, esp. p. 428; Chanoch Albeck, *Mavoʾ lamishnah* (Jerusalem-Tel Aviv, 1983) 82–84; Ephraim E. Urbach, *Ḥazal: Pirqe ʾemunot vedeᶜot* (Jerusalem: Magnes Press of the Hebrew Univ., 1978) 535. Also, see Ben-Zion Rosenfeld, "*Gilgule mashma'ut hashem yavneh bimesoret ḥazal*," in *Yehudim veyahadut*, 149–64; Shemuel Safrai, "*Hahakhra'ah kevet Hillel beyavneh*," in *Proceedings of the Seventh Annual World Congress of Jewish Studies*, 3 (Jerusalem: World Union for Jewish Studies, 1941) 21–44. See Aderet, "*Masekhet Eduyot*," esp. nn. 2–4, for a review of positions about the origin of *m.ᶜEduyyot* and references to rabbinic and secondary literature. See n. 40, above, and nn. 43–44, below, for a new understanding recently proposed by Naeh and some reflections on his interpretation.

42 The concern about *maḥloqet* appears later in the Tosefta as well. *T.ᶜEd.* 2:1, in presenting R. Eliezer's lenient rulings, makes reference to *tanur shel ʾakhnʾai*, "concerning which *maḥloqot* proliferated in Israel." For the occurence of this same language in reference to Bet Shammai and Bet Hillel, see n. 109. (The preceding law, the status of a shoe still on the last, is the law

no word . . . will resemble another."[43] And the gathering of the traditions that form the core of *Eduyyot*, or at least those with which *Eduyyot* begins, would seem to be a measure taken to forestall the further loss and erosion of tradition.[44] If so, then the opening *mishnayot*, which include disputes between Hillel and Shammai in which the sages take yet a third position, illustrate, on the one hand, how much Torah has indeed become fragmented – not only do the fathers of the two houses[45] disagree about details of the law, but others take yet a third position in each of these disputes. On the other hand, these opening *mishnayot* point a way, especially when taken together with *m.ᶜEd.* 1:4–6, to maintain a unified community in the face of fragmentation of the tradition,[46] for the community recognizes ways to determine what the legal

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about which R. Eliezer's students ask him as the excommunicated sage is dying in *b.Sanh.* 68a – see Rashi s.v. *mahu* for the idea that the students are checking to see whether R. Eliezer has retracted his dissenting opinions.) See further on R. Eliezer in *t.ᶜEduyyot* in n.46, below.

43 Naeh, "*'Al mivnim shel zikaron*," as noted above, n.40, understands this not as about loss and fragmentation but about growth of Torah and the consequent need to protect against the possible future loss of an increasingly large and unmanageable corpus of material (since it is not organized; Naeh understands the phrase that teachings do not resemble each other as meaning that Torah is not organized into groups of related teachings).

44 Naeh, "*'Al mivnim shel zikaron*," sees this collecting (reflected in the *ᶜeduyyot* sections of the tractate) and organizing of material (reflected in the parts of the tractate organized by names of disputants and such, which Naeh terms *ḥadarim*, based on *t.Soṭah* 7:11–12) as a response to the proliferation of Torah, as noted in nn.40 and 43, above, not as a response to the rupture of tradition/loss of Torah or to the fragmentation of Torah. Even if *t.ᶜEd.* 1:1 is *not* presenting the original collection and organization of materials as a response to rupture and fragmentation, as Naeh suggests, *m.ᶜEduyyot* as we have it *does* seem to have the issue of fragmentation of Torah and community at its core, in the ways described above. It should also be noted, however, that the particular structure used to organize the material (in the *ḥadarim* that Naeh sees as designed to organize material to protect against forgetting) is mostly the structure of *maḥloqet*, rather than other possible formal structures (not to mention topical organization, the primary organizing principle of the Mishnah as a whole), such as those in *m.Meg.* 5–11, *m.Sabb.* 1:1, etc. (See n.40, above, for the fact that the problem is characterized in the *Sifre* parallel in terms of dispute, the proliferation of conflicting opinions, rather than in terms of other kinds of proliferation of Torah.) The prooftext cited in *t.ᶜEd.* 1:1 (and compare *Sifre Devarim* 48 and *b.Sabb.* 138b–39a) also bears consideration. The fact that the prooftext describes a negative situation (the inability to hear God's word described as a famine) suggests that the situation portrayed in *t.ᶜEd.* 1:1 is itself negative – the loss of ability to access God's authentic Torah – rather than the positive proliferation of Torah that Naeh reads here, which presents the danger of future forgetfulness but which is not itself a negative phenomenon or a phenomenon that represents loss.

45 See n.109, below, on traditions that link the growth of *maḥloqet* to Hillel and Shammai and to their disciples.

46 See the parallel passage in *t.ᶜEd.* 1:3–5. In *t.ᶜEd.* 1:4, the sages say that the minority position is recorded in order that one who transmits the teaching of R. Eliezer can be told that this teaching is R. Eliezer's; presumably, this serves to dismiss that as a valid position. See *y.Moᶜed*

practice ought to be in cases where the law is in dispute.[47]

The loss of Torah through rupture in the tradition leads to fragmentation of Torah into multiple legal teachings and traditions. And this fragmentation of Torah, in turn, can lead to fragmentation of the community – or, in an attempt to achieve a cohesive community, to expulsion of dissident members. These are the issues that underlie the Akavya passage. And these same intertwined issues – rupture in the tradition, fragmentation of Torah, and membership in community – emerge again in the final *mishnah* of the tractate. At

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Qat. 3:1, 81d and *Sifre Devarim* 188 (ed. Finkelstein, 227) for the idea that a position of R. Eliezer's might be presented as not his, presumably in order for it to be deemed acceptable. (On these and other sources relating to the treatment of R. Eliezer's teachings, see Yitshak D. Gilat, *Mishnato shel Rabbi Eliezer ben Hurqanus umeqomah betoldot hahalakhah* [Tel Aviv: Dvir, 1968] 325–26.) Avoiding dissent, then, might mean expunging the dissenter from taking his place among teachers of Torah – either by dismissing his teaching because he has taught it or by erasing the memory of him as the teacher of a teaching that one wants to retain. (These two strategies are significantly different, though, in that the former retains the teaching in the teacher's name – which serves to dismiss the teaching while at the same time preserving the teaching along with the name of its teacher within the tradition. Avraham Walfish pointed out to me the double nature of this move, suggested in both *m.ᶜEd.* 1:4–6 and *t.ᶜEd.* 1:3–5, and noted that *m.ᶜEd.* 1:5 goes so far as to say that overruled teachings may be accepted at a later time; see also the opinion of Rabbi Judah in *t.ᶜEd.* 1:4.) This is equivalent, on the level of transmission of Torah, to excommunication on the level of membership in the community. On inclusion of a sage's teachings as the textual equivalent to creating an inclusive community, see nn. 64 and 116, below. On parallels between R. Eliezer and Akavya, see n. 15, above, and n. 109, below. Note also that traditions about R. Eliezer follow the teaching of Akavya in *ʾAbot R. Nat.* A, 19; these include a statement of R. Eliezer's about treating a colleague with respect and a reference to R. Eliezer's deathbed teachings (compare *b.Sanh.* 68a, where these are taught by the dying sage to students who have lost the benefit of his teachings since they have shunned their excommunicated master).

47 In addition to rules that the community can use to decide the law in cases locked in dispute, *m.ᶜEduyyot* also includes the idea that disputes can be resolved by discussion between the parties to the dispute. The last three *mishnayot* of Chapter One, for example, present discussions between Bet Shammai and Bet Hillel, with Bet Hillel changing their position based on that discussion. Aderet, "*Masekhet Eduyot*," notes that Chapter Six presents the idea of halakhic discussion as a way to avoid *maḥloqet* by resolving it through clarification and persuasion; Aderet sees this section as particularly challenging R. Eliezer's transmission of teachings based on tradition alone. (See nn. 15 and 46, above, for observations about R. Eliezer in connection with Akavya and with *ᶜEduyyot*.) It is noteworthy that *b.Ber.* 28a links the teaching of *ᶜEduyyot* with the resolution of *halakhic* questions in a *bet midrash* that is open to all and in which free exchange of ideas is allowed. Note that Epstein, *Mevoʾot*, 428, understands "Let us begin from Hillel and Shammai" as meaning "let us collect *maḥloqet* beginning with the *maḥloqet* of Hillel and Shammai, and let us resolve them." Naeh, "*ʿAl mivnim shel zikaron*," questions whether this line of the Tosefta is original or is added as a later link between this passage and the laws of Hillel and Shammai; Naeh, as noted above, does not understand the Tosefta as suggesting that it is *maḥloqet* that is the impetus for the collection and organization of the material in *ᶜEduyyot*.

last, it seems, we are presented with an authentic, unbroken tradition: "Rabbi Joshua said: I have received (*mequbal*) from Rabban Yoḥanan ben Zakkai, who heard from his master, and his master from his master, a *halakhah* to Moses from Sinai. . . ."[48] But this tradition, too, gives way immediately to dispute, with Rabbi Judah, Rabbi Simeon,[49] and the Sages offering alternative teachings about what will be Elijah's task when he comes. And, as we have seen, the issue

48 See the discussion of *qbl* in *m.ᶜEd.* 1:6, above, and in *m.ʾAbot*, below. For an identical statement about a different tradition, see *m.Yad.* 4:3 and *t.Yad.* 2:16. There, though, the transmitter is R. Eliezer, who comments on the fact that this teaching, which he knows as a tradition from Sinai, has been arrived at by others through discussion and decision-making. It is intriguing that *m.Yad.* 4:3 is followed by the *mishnah* about the Ammonite proselyte that is cited in *b.Ber.* 28a as a prime example of inclusive decision-making (inclusive both in the sense of including people in the process of decision-making and in the sense of arriving at an inclusive decision – see Steinmetz, "Must the Patriarch" – both of which are championed by R. Joshua, who stands in opposition to Rabban Gamaliel's exclusive stance) right after the *gemara* mentions *ᶜEduyyot* and the resolution of halakhic questions (see preceding note). A tradition similar to that in *m.Yad.* 4:3 and *t.Yad.* 2:16 is also cited in *b.Ḥag.* 3b, where R. Eliezer's anger at hearing a new halakhic teaching is contrasted with R. Joshua's joy at hearing a new teaching. The teaching that R. Joshua hears, in turn, is alluded to at the end of the *aggadah* in *b.Ber.* 28a; for the relevance of the content of that teaching to the themes of that *aggadah*, see Steinmetz, "Must the Patriarch." It would seem, then, that *m.Yad.* 4:3–4 contrasts, or at least is seen by *Bavli* tradition to contrast, the orientations of R. Eliezer and of R. Joshua. It is especially striking, then, that it is R. Joshua who makes the claim to a tradition from Sinai in *m.ᶜEd.* 8:7, and perhaps not surprising that this very claim gives way to a multiplicity of viewpoints. (Christine Hayes, "*Halakhah le-Moshe mi-Sinai* in Rabbinic Sources: A Methodological Case Study," in Shaye J. D. Cohen, ed., *The Synoptic Problem in Rabbinic Literature* [Providence: Brown Judaic Studies, 2000] 61–117, notes that *m.ᶜEd.* 8:7 differs from other tannaitic sources concerning *halakhah leMoshe misinai* in that the teaching claimed to be such a *halakhah* here is not absolutely authoritative and is subject to dispute. She discusses [see n. 18] whether this is because Rabbi Joshua's claim that the teaching is a *halakhah leMoshe misinai* is rejected or whether this text simply lacks the notion that *halakhah leMoshe misinai* is authoritative, and she prefers the latter explanation. In the broader context of *m.ᶜEduyyot*, I would suggest that this passage assumes, like other tannaitic passages, that a claim that a teaching is a *halakhah leMoshe misinai* presents the teaching as authoritative and indisputable. It is this very quality of *halakhah leMoshe misinai* that gives the final *mishnah* of *ᶜEduyyot* its power: finally, a claim to an indisputable authoritative tradition is made, and then this very tradition is contested.)

In this context, revisiting *m.ᶜEd.* 1:6, perhaps we should see a subtle preference for "hearing" over "receiving," "hearing," perhaps, connoting teachings taught in the context of debate and thus representing one opinion among others, while "receiving" denotes the claim that this is the one authoritative tradition that is not debatable or retractable. See *t.Yad.* 2:17–18, in the context of the Ammonite proselyte and directly following R. Eliezer's claim of *mequblani* in 2:16, where the proselyte, confounded by the debate about his permissibility *lavo baqahal*, is told "I have heard," referring to R. Joshua's teaching in the context of a debate. Thus, Akavya uses only "hear" in his instructions to his son recommending retraction of his teachings in *m.ᶜEd.* 5:7.

49 Or Rabbi Ishmael – see Friedmann, *Seder Eliyahu Rabbah*, 24; and see Epstein, *Mavoʾ*, 1191–94 about Simeon/Ishmael.

of *maḥloqet* emerges explicitly in this *mishnah*, as well, in Rabbi Simeon's position that Elijah comes to reconcile *maḥloqet*. The juxtaposition, in this *mishnah*, of issues of membership in the community, of dispute, and of the integrity of the tradition underscores the themes that I have suggested underlie *m.ᶜEduyyot* and suggests that full resolution of the problem to which the tractate attests will come only in the messianic age. Meanwhile, it is the challenge of the sages to do whatever they can to preserve tradition, to balance the need for expression of teachings with the fear of fragmentation, and to attempt to define a community that can incorporate members who share its basic commitments.

ᵓAbot

M.ᵓAbot begins with a series of *mishnayot* that echo *m.ᶜEduyyot*'s ending:

> Moses received (*qibel*) Torah from Sinai and transmitted it to Joshua, and Joshua to the elders, and the elders to the prophets, and the prophets transmitted it to the men of the great assembly. . . .

This transmission of tradition continues unbroken, as disciple receives (*qibel*) from master, down through the *zugot* (pairs) to Hillel and Shammai,[50] and then through Rabban Yoḥanan ben Zakkai[51] and his students, among whom is Rabbi Joshua.

M.ᶜEduyyot ends with Rabbi Joshua teaching a tradition that he received from Rabban Yoḥanan ben Zakkai, who heard it from his teacher, and his teacher from his teacher, all the way to Moses at Sinai. This claim to an unruptured tradition is unique[52] in *m.ᶜEduyyot* and, as we saw, even this claim immediately gives way to fragmentation, as others dispute the tradition that Rabbi Joshua teaches. But *m.ᵓAbot* begins with the idea of a tradition that has suf-

50 See below for the insertion of the dynasty of Rabbi Judah haNasi.

51 The beginning of *m.ᵓAbot* 2:8 links Rabban Yoḥanan ben Zakkai to Hillel and Shammai, using the word *qibel*. Some have seen this as a later insertion, with the purpose of linking the material about the students of Rabban Yoḥanan ben Zakkai with the material about the transmission of Torah from Sinai through Hillel and Shammai. For a discussion of this possibility, see Schechter, *Avot deRabbi Natan*, xxv; Louis Finkelstein, *Mavoᵓ lemasekhtot Avot veAvot deRabbi Natan* (New York: Jewish Theological Seminary of America 1950) 40–41; Jacob Neusner, *The Rabbinic Traditions About the Pharisees Before 70* (3 vols.; Leiden: E. J. Brill, 1971) 1:19; Kister, *Iyunim*, 121–22 ; Strack and Stemberger, *Introduction*, 4. In any event, the use of *qibel* characterizes the first set of material but not the set of material about the students of Rabban Yoḥanan ben Zakkai. Contrast the final *mishnah* of *m.ᶜEduyyot*, in which R. Joshua does use *qbl* in relation to a teaching that he claims to have received from Rabban Yoḥanan ben Zakkai, and so on, back to Sinai.

52 See n. 48, above. The fact that Akavya's son cannot, by his father's own request, retain his father's tradition adds to this sense of rupture.

fered no rupture – each teacher, from Rabbi Joshua and his colleagues up through Rabban Yoḥanan ben Zakkai received[53] Torah, and this Torah, ultimately, is the Torah received by Moses himself at Sinai. And, just as the tradition is unruptured, Torah is unfragmented by dispute. The very same sages whose disputes inaugurate *m.ᶜEduyyot*, Hillel and Shammai, are here portrayed as together receiving Torah from the pair that preceded them,[54] and together transmitting Torah to Rabban Yoḥanan ben Zakkai. Indeed, what is unique about *m.ʾAbot*, besides the subject matter of its teachings, to which we will turn below, and the chain of tradition that structures the first two chapters, is that it alone among all of the tractates of the Mishnah has no *maḥloqet*. We have pairs of sages each of whom teaches different teachings, we have teachings that might seem to differ with each other,[55] but there is never the suggestion that anyone is in dispute with anyone else.[56]

In fact, scholars have suggested that not too far beneath the surface of *m.ʾAbot* lies evidence of fissures within the community. Most notable, the collections of *mishnayot* that, taken together, detail the transmission of Torah through Rabban Yoḥanan ben Zakkai and his students[57] are interrupted by

53 As noted above, n.51, the word *qibel* is not used in relation to R. Joshua and the other students of Rabban Yoḥanan ben Zakkai, material that scholars assign to a different source from the transmission from Moses/Sinai through Hillel and Shammai in Chapter One. Nevertheless, the sense one has in reading the first two chapters of *m.ʾAbot* is of an uninterrupted tradition through the students of Rabban Yoḥanan ben Zakkai. Should we see the absence of *qbl* for the students of Rabban Yoḥanan ben Zakkai as simply a function of the origin of this material in a different source, or should we see it as alluding to the fact that, at this point, we are no longer talking about an unruptured tradition, and that there is, in fact, dispute among these students? If the latter, then this might be another example of conflict that is under the surface of *m.ʾAbot* but to which the text does not explicitly allude; see below.

54 This is in stark contrast to the idea, for which see n.109, below, that it is in the time of Hillel and Shammai, and especially their students, that *maḥloqet* proliferates. Also, see below for the *zugot* as representing the beginnings of *maḥloqet*.

55 For example, 1:2 and 1:18 – "On three things the world stands." Neusner, *Rabbinic Traditions*, 18–19, notes the similarity between these two teachings and concludes that 1:2–1:3, in which the word *qibel* does not appear, constitutes a later addition; thus, according to Neusner, the chain of named sages in *m.ʾAbot* begins with the *zugot*, paralleling *m.Ḥag.* 2:2 (on which see below).

56 That is, opinions of sages are never presented as disputes. *Maḥloqet* is, of course, mentioned in *m.ʾAbot* 5:17, a passage that has spawned much discussion – why would it be a positive thing for *maḥloqet l'shem shamayim* to continue to endure? See Naeh's ("*ʿAsei libkha*") suggestion that *maḥloqet* here, as he argues is true of tannaitic sources in general, means a group or division into groups; hence, the endurance of *maḥloqet* that is *l'shem shamayim*, according to Naeh, means that the group will not be destroyed, as was Korah's faction. Note that this *mishnah*, too, presents Hillel and Shammai as a paradigm of *maḥloqet*.

57 The first section of *m.ʾAbot*, consisting of Chapters One and Two (see n.6, above), is assumed to be based on two collections, the first ending with Hillel and Shammai (if the beginning of 2:8 is seen as a later insertion; Kister sees this as unresolved [for the secondary literature on this question, see n.51, above] – if it is not a late insertion, then we might see the first collection

a group of *mishnayot* that insert the teachings of members of Rabbi Judah haNasi's dynasty after the teachings of Hillel and Shammai.[58] We are given the impression, at first glance, that it is Rabbi who is the direct inheritor of the tradition, although these *mishnayot* do not use the word *qibel*[59] or any other term that might be employed to suggest that this is actually the case. So, on the one hand, we have a group of *mishnayot* inserted in a way that might be understood to foreground the claim of primacy of Rabbi's dynasty over against the primacy of the sages of Yavneh.[60] But, on the other hand, there is nothing explicit in the text that suggests that there might be any dispute or competition between these two groups at all. In a sense, I would suggest, of a world that in reality is characterized by dispute and discord, *m.ʾAbot* paints a picture that denies a place to any such reality.

Along the same lines, Herr[61] has pointed to the omission of a possible link in the chain of transmission of Torah in *m.ʾAbot* 1:1. While we would expect, according to Herr, to find the priests accorded a significant role in the transmission of Torah, the Mishnah gives them no place at all in its accounting of the chain of tradition.[62] Here, too, while we might see this as evidence of conflict between the group that gives rise to the sages and the priestly class, with the sages laying claim to presence in the chain of tradition to the exclusion of the priests, we must also account for the fact that *m.ʾAbot* is simply silent on this point. Nowhere do we have even as much as a hint of conflict between priests and sages such as we find in *m.ʿEd.* 8:3, where Rabban Simeon ben Gamaliel rejects the possibility of implementing the testimony of Rabbi Joshua and Rabbi Judah ben Beteira because of Rabban Yoḥanan ben Zakkai's

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as ending with Rabban Yoḥanan ben Zakkai at the beginning of 2:8, in which case the interpolation of the material about the dynasty of Rabbi is even more striking) and the second consisting of traditions relating to the five students of Rabban Yoḥanan ben Zakkai. See Sharvit, *Nusḥaʾoteha*, 318–19 for a review of the secondary literature about these collections. The last two *mishnayot* of Chapter Two seem to be added based on similarity of language and content; see Sharvit, 319 and Albeck, *Seder Neziqin*, 350.

58 See, most recently, Kister, *Iyunim*, pp. 117–18. The notion that *m.ʾAbot* 1:16–2:7 is an interpolation is based both on internal characteristics and on comparison with *ʾAbot deRabbi Nathan*, which is based on an earlier version of *ʾAbot* that did not include this section. The presence of this passage in *m.ʾAbot* argues for the late redaction of the tractate in the form that we have it (but see below nn. 80 and 82); see Epstein, *Mavoʾ*, 233 and Guttmann, "Tractate Aboth."

59 See Finkelstein, *Mavoʾ*, 6; Sharvit, *Nusḥaʾoteha*, 319; Neusner, *Rabbinic Traditions*, 20.

60 Note the parallel between the question posed by Rabbi in 2:1 and that posed by Rabban Yoḥanan ben Zakkai to his students in 2:9; see Kister, *Iyunim*, 122, n. 28.

61 Moshe David Herr, "*Haretzef shebeshalshelet mesiratah shel hatorah*," *Zion* 44 (1979) 43–56; see his citation of parallel texts and secondary literature.

62 See Neusner, *Rabbinic Traditions*, 19, for the hypothesis that *m.ʾAbot* 1:2 is inserted to "claim a connection with the last of the legitimate priesthood" as well as to represent the priesthood as giving Torah primacy over Temple worship.

decree not to have court sessions in relation to a matter about which the priests will not listen.[63]

M.ᵓAbot, then, in its focus on transmission of Torah and on the bearers of tradition, has ample opportunity to portray conflict among factions,[64] disputes among sages, and the rupture of tradition that is seen to underlie such fragmentation of Torah and community. We will look shortly at another text that also tells about transmission of the tradition but that, unlike *m.ᵓAbot*, portrays a transmission marked by dispute. But *m.ᵓAbot* does not do this, and my suggestion is that this is deliberate: that *m.ᵓAbot* is responding to the kind of issues raised in *m.ᶜEduyyot*[65] – perhaps, in fact, responding to *m.ᶜEduyyot* itself – and creating an alternative vision of an unfragmented community that shares an unruptured and undisputed tradition of Torah.

The absence of *maḥloqet* in *m.ᵓAbot* is, of course, closely related to the subject matter of the tractate.[66] While questions of impurity and purity, fitness and unfitness lend themselves to disputes in which parties take opposite positions,[67] general ethical and religious teachings do not lend themselves in the

63 And recall that it is the priests who take the exclusive position in *m.ᶜEd.* 8:3 – *leraḥeq ʾaval loʾ leqarev*. Omitting mention of the priests, then, might also be a way of silencing a voice associated with exclusiveness. For the exclusive stance of the priests, see Meir Bar-Ilan, "The Reasons for Sectarianism According to the Tannaim and Josephus's Allegation of the Impurity of Oil for the Essenes," in Lawrence Schiffman, Emmanuel Tov, James VanderKam, eds., *The Dead Sea Scrolls: Fifty Years After Their Discovery* (Jerusalem: Israel Exploration Society, 2000) 587–99; see also n.32, above.

64 A third example of conflict between factions is suggested by Finkelstein, *Mavoʾ*, 56–63, who hypothesizes that the core of Chapter Three is a collection of sayings by Shammaite sages, beginning with Akavya, that originally followed the first collection detailing the transmission of Torah from Moses at Sinai. Finkelstein suggests that the material about Rabban Yoḥanan ben Zakkai and his students was inserted to advance the claim that Rabban Yoḥanan ben Zakkai, not the Shammaite sages, is the true inheritor of the tradition; he also suggests that the addition of the teachings of additional sages in Chapter Three functions to dilute the focus on Shammaite tradition.

Whether or not one accepts Finkelstein's reconstruction, it is noteworthy that *m.ᵓAbot* includes the teachings of sages whose teachings are otherwise relatively unknown, including not only Akavya and other sages in Chapter Three, but also Elisha ben Avuya, in Chapter Four; see R. Travers Herford, "Pirke Aboth," in Bruno Schindler and Arthur Marmarstein, eds., *Occident and Orient* (London: Taylor's Foreign Press, 1936) 244–52.

65 Note that Aderet, "*Masekhet Eduyot*," suggests that *m.ᶜEduyyot* is structured around four conflicts which it becomes necessary to resolve at Yavneh: Bet Shammai vs. Bet Hillel; sages of the Second Temple period vs. sages of Yavneh; individual sages who refuse to accept the ruling of the majority; sages vs. priests.

66 See n.117, below, on the scholarly debate concerning what should be seen as the essential core of *m.ᵓAbot*: its ethical teachings or the chain of transmission with which it begins.

67 Of concern here is not *why* such issues may be divisive or may serve as an arena in which divisiveness plays out (but see nn.110 and 112, below); my point here concerns, rather, the

same way to clearly opposing viewpoints. But, rather than seeing the absence of disputes in *m.ʾAbot* as a function of the subject matter of the tractate (that is, rather than assuming that there are no disputes because there's not much to argue about!), I want to suggest that we should look in the opposite direction and see the subject matter of *m.ʾAbot* as a function of the tractate's attempt to portray a world without *maḥloqet*. Where, if we want to find complementary rather than opposing teachings, can we look? We look to a domain that does not lend itself as readily to dispute, the domain of ethical and religious teachings.

So, first, I am suggesting that the focus on ethical and religious teachings in *m.ʾAbot* is a choice that allows for a *text* in which teachings are transmitted without *maḥloqet*. But, in addition, I want to suggest that this focus on ethical and religious teachings highlights the common ground of the *community*, the set of commitments that are shared even by members of the community whose practical teachings might be rejected. Thus, the focus of *m.ʾAbot* on ethics not only allows for a tractate without *maḥloqet*, it also sets a program for the formation of a community that, even when members do disagree, can establish inclusive boundaries with respect to membership – those who share the community's core values retain membership even when, in other ways, the positions that they take might marginalize them.

This, in fact, is what R. Judah says in *m.ʿEd.* 5:6 in response to the tradition that Akavya ben Mehalalel was excommunicated:

> God forbid that Akavya was excommunicated, for the [Temple] courtyard is not locked[68] before any person of Israel who is like Akavya ben Mehalalel in wisdom and in fear of sin.

According to Rabbi Judah,[69] Akavya cannot have been expelled from the community because Akavya shares the core values of the community;[70] not only does he have wisdom, but he has fear of sin. In this context, we should recall

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nature of discourse in the halakhic domain, particularly in the area of fitness and purity, in contrast to that in the ethical/religious domain.

68 For this term and its implications, see nn.1 and 35, above. Note, in relation to the discussion at the end of n.35, R. Eliezer's definition in *m.Pesaḥ.* 9:2 of *derekh reḥoqah* as outside the *ʿazarah*; denial of Akavya's exclusion in *m.ʿEd.* 5:6 refers to his being inside the *ʿazarah*, and exclusion in *m.ʿEd.* 5:7 and in 8:3 and 8:7 is refered to as *rḥq*. See also Horbury, "Extirpation and Excommunication," and Joseph Baumgarten, "Exclusions from the Temple: Proselytes and Agrippa I," *JJS* 33 (1982) 215–25. This statement about the *ʿazarah* in *m.ʿEd.* 5:6 has led many to assume that Akavya must have lived during the time of the Temple (see n.9, above), though it is not clear that the statement is meant to be taken literally. See Sussmann, "*Heqer toledot hahalakhah*," n.211.

69 See n.23, above.

70 The *mishnah* suggests that it was someone else who was excommunicated on account of his position on *taharat yadayim*. See n.13, above.

Akavya's dying words to his son, words which are echoed in the final *mishnah* of the tractate: "You deeds will bring you near and your deeds will distance you" (*m.ᶜEd.* 5:7). Membership in the community, then, does not depend on one's legal teachings or on being commended, however we might understand that term. Akavya's son will be included or excluded on his own merit, and that merit is based on his deeds alone.

What I am suggesting, then, is that the goal of *m.ʾAbot* is to portray a community that, as the inheritor of an unruptured, authentic tradition, is unfragmented by dispute. Legal rulings inevitably involve dispute which, in turn, may be seen as reflecting loss of tradition and distance from the source of tradition.[71] Thus, *m.ʾAbot* focuses on ethical/religious teachings, because it is this domain that allows for a text without dispute and that constitutes the fundamental set of commitments that join all members of the community.

In each of the three features that are distinctive to this tractate – the unruptured tradition, the lack of dispute, and the focus on ethical/religious teachings – *m.ʾAbot* stands in stark contrast to *m.ᶜEduyyot*, which is presented as a response to the loss of tradition in the face of rupture and of distance from the source of tradition and which focuses on those areas of law and ritual that are the subject of dispute and fragentation. It is the figure of Akavya – standing at the center of *m.ᶜEduyyot* and echoing passages about the dangers of dispute and fragmentation from the first and final chapters of the tractate – that highlights the challenges of maintaining a community under such circumstances of rupture and fragmentation. And it is Akavya's dying words to his son – "Your deeds will bring you near, and your deeds will distance you" – that suggest that we might look to the domain of ethical/religious behavior to find that which allows for membership in community.

It is, of course, in this domain that Akavya's teaching in *m.ʾAbot* falls. "Know whence you have come, and to where you are going, and before whom you will in the future give judgment and accounting" (*m.ʾAbot* 3:1).[72] And it is striking that, in this domain, Akavya comes first – his is the first teaching after the section of *m.ʾAbot* that traces the tradition from Moses/Sinai through Hillel and Shammai and through Rabban Yoḥanan ben Zakkai and his students.[73]

71 Dispute may, but does not necessarily, reflect this loss and distance; see n.3, above. See n.38 for the possibility that the final *mishnah* of *m.ᶜEduyyot*, which traces a tradition to Moses at Sinai, is interpreting a verse about *remembering* Torah – thus linking *access to* versus *loss of* Torah ("remembering" versus "forgetting") with *connection to* versus *distance from* the source of Torah.

72 This teaching, or parts of it, can in fact be understood as referring to domains other than the ethical/religious (see below, nn.90 and 97–98); hence, perhaps, the need for the explanation that follows this statement in *m.ʾAbot*, which makes it clear that we are to understand Akavya's teaching in *m.ʾAbot* within this domain.

73 See n.7 about *m.ʾAbot* 2:15–16.

The organization of Chapters Three and Four of *m.ˀAbot* has posed a puzzle for scholars; there does not seem to be a clearcut way to understand the principles – chronological, topical, formal, or others – according to which this section of the tractate is organized. The work of Finkelstein, Sharvit, and, most recently, Kister, though, has shed some light on those elements of Chapter Three, in particular, that might have served as the core around which material was added over time.[74] Finkelstein suggested that the core of Chapter Three, around which additional teachings were added due to similarity of the names of the teachers and other such factors, consists of the teachings of five sages from the time of the Second Temple: Akavya ben Mehalalel, Ḥanania Segan haKohanim, Rabbi Neḥuniah ben haQana, Rabbi Ḥanina ben Dosa, and Rabbi Dosa ben Hyrcanus.[75] Sharvit has shown that several of the *mishnayot* in this chapter are absent from a variety of witnesses,[76] and Kister has shown that the chapter includes doublets of teachings as well as later additions.[77]

It is difficult, when discussing *m.ˀAbot*, to know what stage of the text one ought to be analyzing. While this may be the case, to some degree, for all rabbinic texts, the issue stands out more with respect to *m.ˀAbot* for two main reasons. First, on the level of transmission, it should be noted that there are far more copies of *m.ˀAbot* than of any other tractate of the Mishnah, since *m.ˀAbot* is included in prayerbooks because of the custom of reciting the tractate on Shabbat. These copies reflect different traditions of inclusiveness or limitedness of material, though, in any event, some of this material would seem to have accrued rather late in the transmission of the tractate.[78] In addi-

74 By "added" I mean during the course both of redaction and of transmission; see below and nn. 80 and 82.

75 According to Finkelstein, *Mavoˀ*, 74–75, the core of Chapter Four is the sayings of the "four who entered *pardes*"; note that our Chapter Three includes a series of teachings by R. Akiva.

76 Sharvit, *Nusḥa'oteha*, 321–22; for details, see n. 81, below.

77 Kister, *Iyunim*, 147–48. Examples of doublets are *m.ˀAbot* 3:2 and 3:6 as well as 3:4 and the second part of 3:7; note that 3:6 and 3:7 are two of the *mishnayot* that Sharvit identifies as later additions. Kister identifies the end of *m.ˀAbot* 3:2 as a later addition. See n. 81, below for correlations between Sharvit's and Kister's findings and Finkelstein's hypothesis about the core of Chapter Three. See also Ben Zion Dinur, *Masekhet Abot* (Jerusalem: Mossad Bialik, 1972) 24–25 for an attempt to identify the early core of chapter three based on formal criteria.

78 See Sharvit, *Nusḥa'oteha*, 1–3 and 320–326 on the degree to which the particular transmission and liturgical use of *m.ˀAbot* led to an unusual degree of additions and variations. Sharvit notes that our printed editions contain the fullest version represented by the witnesses; he says that this version took full shape only in the fifteenth to sixteenth centuries and is reflected in the prayerbooks of Italy and Germany. The shorter version represented in the prayerbooks of Spain accords with Genizah manuscripts as well as with the text of Rabbeinu Natan ben Avraham Av heYeshivah and with *ˀAbot deRabbi Nathan*. On the other hand, Sharvit notes, the main Mishnah manuscripts as well as other witnesses contain a version of *m.ˀAbot* almost as full as the fullest version, leaving out only *m.ˀAbot* 5:21.

tion, *ʾAbot deRabbi Nathan* attests to an early version of *m.ʾAbot*,[79] and so, with *m.ʾAbot*, we cannot simply talk of early collections that the redactor used in editing the tractate, as we are accustomed to doing in regard to other Mishnah tractates. Instead, we must be aware of earlier and later redactions of the tractate or, perhaps, we must do away to a significant degree with the sharp distinction between early collections that were incorporated into the redacted tractate, the process of redaction, and the history of transmission.[80] I will not attempt, in what follows, to account for all features of any particular version of *m.ʾAbot*. I want to focus, rather, on an issue that emerges in several of the *mishnayot* in Chapter Three. It might be noted that each of these *mishnayot* represents what would appear to be the earliest stratum of *m.ʾAbot*,[81] though

79 See n.58, above; see also n.6, on the different relationships between the different sections of *m.ʾAbot* and the parallel sections of *ʾAbot deRabbi Nathan*.

80 The distinction between redaction and transmission additionially may be fuzzier for other rabbinic and biblical texts than our use of these terms tends to suggest. For a review of this question in relation to rabbinic texts, see Sasha Stern, *Jewish Identity in Early Rabbinic Writings* (Leiden: E.J. Brill, 1994) xxii–xxiii. For a discussion of related issues in relation to biblical texts and the proposal that we might think in terms of the "development of successive literary editions of individual books," see Eugene Ulrich, "The Scrolls and the Study of the Hebrew Bible," in Robert A. Kugler and Eileen M. Schuller, eds., *The Dead Sea Scrolls at Fifty* (Atlanta: Scholars Press, 1999) 31–41. Nevertheless, *m.ʾAbot* stands out from other rabbinic texts at least in terms of the *information* available to us about its redaction history, given the existence of *ʾAbot deRabbi Nathan*, as well as, perhaps, in terms of its particularly dynamic transmission as a Mishnah-tractate that became part of the liturgy.

81 The following is a synthesis of Sharvit's (321–22) and Kister's (147–48) findings with Finkelstein's (63) hypothesis about the core of Chapter Three. Passages that Finkelstein sees as part of the earliest core are in italic.

3:1	*Earliest core*
3:2	*First part – earliest core*
3:2	Second part – early addition to core, based on similarity of name, according to Finkelstein; according to Kister, the end of this second part is a late addition
3:3	Addition based on similarity of material, according to Finkelstein
3:4	Early addition to core, based on similarity of name, according to Finkelstein
3:5	*Earliest core*
3:6–8	Late addition, according to Sharvit; Kister sees 3:6 and 3:7 as doublets of other passages (see n.77, above); Finkelstein sees 3:6 as added because of similarity of material to the second part of 3:2 and to 3:3; he sees the first part of 3:7 as added because of the similarity "Rabbi X *ish* Y" to 3:6; and he sees the second half of 3:7 and 3:8 as linked by *mitḥayev benafsho* to 3:4 and by the theme of solitary learning to 3:6
9	*Earliest core*; Sharvit notes that the second half is missing from several witnesses, but both sets of teachings occur in both versions of *ʾAbot deRabbi Nathan*; according to Finkelstein, the earliest core of *m.ʾAbot* would have had 3:9 (Ḥanina ben Dosa) immediately following 3:5 – placed there, instead of following 3:10 (Dosa ben Hyrcanus), because of the similarities of the names of the sages in 3:2, 3:5, and 3:9; in *ʾAbot deRabbi Nathan*, on the other hand, the teaching of Ḥanina ben Dosa comes last, after

that should not be taken to mean that my hypothesis pertains exclusively to an early version of the tractate.[82]

The Akavya passage in *m.ʿEduyyot* highlighted the qualities of wisdom and fear of sin, in the comment of Rabbi Judah on why it cannot have been Akavya who was excommunicated, and the importance of deeds, in the comment of Akavya to his son about what will determine his inclusion in or exclusion from the community. These three elements – wisdom, fear of sin, and deeds – take a central place in the teachings of the third chapter of *m.ʾAbot*. Indeed, several teachings emphasize the primacy of fear of sin and of deeds over against the quality of wisdom.

> Rabbi Ḥanina ben Dosa[83] says: Anyone whose *fear of sin* takes precedence over his *wisdom*, his wisdom endures, and anyone whose *wisdom* takes precedence over his *fear of sin*, his wisdom does not endure. He used to

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the teaching of Dosa ben Hyrcanus, as would be expected (this is the case in version A, in which the teaching of Akavya is first, as it is in *m.ʾAbot*; in version B, it comes last before the teaching of Akavya – in both versions of *ʾAbot deRabbi Nathan*, then, the teaching of Ḥanina ben Dosa is in a special position with respect to the teaching of Akavya, either proximate to it or forming an envelope with it – on this teaching, see below)

10 *Second part – earliest core*; Sharvit notes that the first part is missing from many witnesses (see *t.Ber.* 3:2 where this teaching is attributed to R. Akiva; see Saul Lieberman, *Tosefta Ki-Fshuṭah, Zeraʿim* [2 vols.; New York: Jewish Theological Seminary of America, 1955] 1:28)

According to Finkelstein, the rest of the chapter consists of the addition of the teachings of three sages named Eleazar (but see n. 85, below) plus the teachings of R. Akiva and R. Ishmael, which Finkelstein sees as originally part of the collection that formed the core of Chapter Four. See below for other conjectures about the teachings of the sages named Eleazar (n. 87) and the teachings of R. Akiva (n. 86).

82 The comments above about the interpolation of the dynasty of Rabbi Judah haNasi, for example, have to do with a version of *m.ʾAbot* that postdates the version on which *ʾAbot deRabbi Nathan* is based. Thus, one can see these comments as relevant only to that later version of the tractate, or one can argue that the earlier version of the tractate is shaped by concerns that continue to govern later additions to the tractate. If so, then one can argue, with caution, that elements of later additions reflect tendencies already present in an earlier version of the tractate. In the example of the interpolation of Rabbi Judah haNasi's dynasty, this would mean that, while advancing a particular agenda that may be foreign to the early version of the tractate (the centrality of Rabbi Judah haNasi), the nature of the later passage and the way in which it is inserted reflect concerns of the early tractate (transmission of Torah and negation of conflict). See Walfish, *Shitat haʿarikhah hasifrutit*, 24–26 and nn. 90–92, for the notion that later stages of redaction may preserve compositional principles embedded in earlier stages.

83 See n. 81, above, for the teaching of Rabbi Ḥanina ben Dosa as representing part of the earliest core of *m.ʾAbot*, according to Finkelstein, and for its special place in both versions of *ʾAbot deRabbi Nathan*.

> say: Anyone whose *deeds* exceed his *wisdom*, his wisdom endures, and anyone whose *wisdom* exceeds his *deeds*, his wisdom does not endure.[84] (*m.ʾAbot* 3:9)

> He [Rabbi Eleazar ben Azariah] used to say: Anyone who *wisdom* exceeds his *deeds*, to what is he similar? To a tree whose branches are many but whose roots are few. . . . But anyone whose *deeds* exceed his *wisdom*, to what is he similar? To a tree whose branches are few but whose roots are many. . . .[85] (*m.ʾAbot* 3:17)

Rabbi Akiva's enigmatic teaching, too, emphasizes the fundamental importance of deeds – "Everything is in accordance with the *deed*"[86] (*m.ʾAbot* 3:15)[87]

This emphasis on deeds and fear of sin informs Akavya's teaching in *m.ʾAbot* as well: "Look at three things and you will not come into the hands of transgression" (*m.ʾAbot* 3:1). And this teaching, as noted, is the first of the teachings

84 On the second part of this *mishnah*, see n.81, above.

85 In many witnesses this *mishnah* is the final *mishnah* of Chapter Three, since 3:18 is missing from those witnesses; see Sharvit, *Nusḥaʾoteha*, 322.

86 For the different versions of this teaching, see Sharvit, *Nusḥaʾoteha*, 190–92, the discussion in Shamuel Safrai, "*Hakol lefi rov hamaʿaseh*," *Tarbiz* 53 (1984) 33–40, and Kister, *Iyunim*, 128–29. See also, in relation to this teaching, *b.Sanh.* 81a (//*b.Mak.* 24a); *m.Qidd.* 1:9; *t.Qidd.* 1:13–14; *y.Qidd.* 1:9/81d; *b.Qidd.* 39b–40b (and compare *y.Peʾah* 1:1, 16b). Kister prefers the reading "according to the deed" (which is rejected by Safrai in favor of "but not according to . . .") based on a comparison with *ʾAbot deRabbi Nathan* as well as other factors. Safrai's analysis of parallels to Rabbi Akiva's teaching demonstrates that there is a tradition attributed to R. Akiva that a single good deed can determine a person's fate. This, however, does not rule out the reading "according to the deed," nor is this reading opposed to the notion that "the world is judged with goodness," as Safrai assumes; in fact, this tradition, along with the notion of judgment with goodness, would seem to *support* the reading "according to the deed." (On Rabbi Akiva and deeds, see further n.101, below.) The notion of the world being judged with goodness might be understood as an anti-gnostic teaching; see below, nn.95 and 97–98, for the possibility that some of the teachings in *m.ʾAbot*, including *m.ʾAbot*'s version of Akavya's teaching, are responding to gnosticism. In regard to Rabbi Akiva's teaching about goodness in the larger context of *m.ʾAbot*, it is intriguing to consider Giovanni Filoramo's description of Tertullian's "defence of . . . the goodness of the cosmos" and related doctrines in relation to his refutation of esoteric gnostic traditions by means of "the doctrine of the visible, public Apostolic Succession," in *A History of Gnosticism*, trans. A. Alcock (Cambridge, Mass. and Oxford: Basil Blackwell, 1992) 4–5.

87 Note also the reference to deeds in *m.ʾAbot* 3:11 – "*even though* he has Torah and good deeds," while pointing out that certain evils outweigh these, underscores the otherwise paramount value of Torah and good deeds. Compare *y.Peʾah* 1:1, 16b, where a similar teaching appears in the context of a discussion of deeds. The theme of deeds may offer a more satisfactory explanation of the inclusion of the teachings of Rabbi Eleazar haModaʿi (3:11) and Rabbi Eleazar ben Azariah (3:17) than that offered by Finkelstein (see n.81, above). For the teaching of Rabbi Eleazar Ḥisma (3:18), see n.85, above, and n.115, below.

in *m.ʾAbot* whose place is not determined by the format of the chain of transmission. By assigning Akavya this place in the tractate, *m.ʾAbot* brings to the center the sage who is marginalized in *m.ʿEduyyot*. It also highlights the qualities that are said to characterize Akavya in *m.ʿEduyyot* and, in particular, the importance of deeds, which Akavya transmits to his son at the end of the passage in *m.ʿEduyyot*. If we see *m.ʾAbot* as responding to *m.ʿEduyyot*, as I have suggested above, then the choice of Akavya as a central teacher of the tractate's emphasis on ethical conduct underscores the concern that I have suggested animates *m.ʾAbot* – the goal of forming a community[88] that neither excludes its members nor succumbs to fragmentation.

"Look at Three Things"

I want to look more closely at the teaching of Akavya that is transmitted in *m.ʾAbot* in order to support the idea that it is the choice of ethical teachings that allows *m.ʾAbot* to portray a community that is both inclusive and unfragmented. First, it should be noted that Akavya's three things are cited as four things in *ʾAbot deRabbi Nathan* (A, 19; B, 32). It is often difficult to determine based on *ʾAbot deRabbi Nathan* what the earlier version of a teaching might have been, but it seems likely that the version that has Akavya pointing to four things precedes *m.ʾAbot*'s version of three things. First of all, a change to three from four makes sense within the context of *m.ʾAbot*, since there is often a set of three teachings, or a teaching concerning three things, transmitted by a given sage.[89] In fact, teachings in threes are attributed consistently to the sages of the *zugot* as well as to the students of Rabban Yoḥanan ben Zakkai. Presenting Akavya as the author of a statement about three things links him, and the section of *m.ʾAbot* which his teaching begins, with the preceding

88 Several passages in the third chapter of *m.ʾAbot* focus on the idea of a community of people who share engagement with Torah; see *m.ʾAbot* 3:2, 3:3, and 3:6 and Kister's discussion of this material and parallels in *Iyunim*, 147–48. See Matthew 18:20 (Kister notes this parallel on 147) – "*For where two or three are gathered in my name, I am there among them*" – culminating Jesus' speech about membership in and estrangement from the community; on this passage, see n.35 above.

89 See, for example, the first two *mishnayot* of *m.ʾAbot*: the first has three teachings, and the second has a teaching concerning three things. Teachings in threes are attributed consistently to the sages of the *zugot* as well as to the students of Rabban Yoḥanan ben Zakkai, beginning in 2:10. See Saldarini, "Adoption" and Judah Goldin, "The First Pair (Yose ben Yoezer and Yose ben Yoḥanan) or the Home of a Pharisee," *AJSR* 5 (1980) 41–61 and the literature cited there in nn.2 and 3. See also Neusner, *Rabbinic Traditions*, 17–18, for the occurrence of threes in the traditions of the patriarchal dynasty. Dinur, *Masekhet ʾAbot*, identifies this as one of the formal criteria by which he attempts to identify the early stratum of Chapters Three and Four; see above, n.77.

section(s) of the tractate and with the sages whose teachings have already been introduced.

Second, when compared with the version of *ʾAbot deRabbi Nathan*, the version of *ʾAbot* seems to conflate two of the things to which Akavya draws one's attention:

Whence he has come	Whence you came
and to where he is going	and to where you are going
and what is to be in the *future*	and before whom you will in the *future*
and who is his *judge.*	give *judgment* and accounting.
(*ʾAbot R. Nat.* A, 19)	(*m.ʾAbot* 3:1)

The third item in *m.ʾAbot* has both the elements of judgment (*din*) and the future, elements from the last two items in *ʾAbot deRabbi Nathan*. It seems simpler to account for the third item in *m.ʾAbot* as a conflation of the third and fourth items in *ʾAbot deRabbi Nathan*, especially if we presume the desire to present a three-part teaching, than it is to account for an expansion of the third element of *m.ʾAbot*'s version into the third and fourth items in *ʾAbot deRabbi Nathan.*

The possibility of seeing Akavya's teaching in *m.ʾAbot* as deriving from a four-part teaching – or, even if the relationship is the reverse, the fact that there is a tradition that transmits this teaching as a four-part teaching – makes the parallel between Akavya's teachings in *m.ʾAbot* and *m.ʿEduyyot* all the more striking. Four halakhic teachings are rejected in *m.ʿEduyyot*, along with the sage who transmitted them, but this same sage's four-part ethical teaching, condensed into three parts, is accepted in *m.ʾAbot.*[90]

But imagining Akavya's teaching as a four-part item also calls attention to another parallel, one that is there even if we ignore the possibility of a four-part teaching, but which is all the more striking when we take note of the four-part version of Akavya's teaching.[91] I will present it here, though, in parallel with the three-part teaching from *m.ʾAbot*:

90 The conjecture that the three-part version of Akavya's teaching in *m.ʾAbot* derives from a four-part version of the teaching raises the question as to whether there might be another impetus, besides the desire to maintain the tripartite structure of teachings in *m.ʾAbot*, behind the condensation of this teaching. This would, of course, require an analysis of the meaning of "what is to be in the future," the third element in the *ʾAbot deRabbi Nathan* tradition. And this, in turn, is related to the question of whether the teaching in *ʾAbot deRabbi Nathan* is to be seen purely as an ethical teaching, or whether Akavya's teaching ought to be seen as an esoteric teaching which is domesticated, to different degrees, in both *m.ʾAbot* and *ʾAbot deRabbi Nathan*. See nn.97 and 98, below.

91 *ʾAbot R.Nat.* B, 32: "A person should look at four things and will not come into the hands of transgression...."

Whoever looks at four things it would be better for him had he not come into the world: what is above and what is below what is before and what is after.[92] (*m.Ḥag.* 2:1)	Look at three things and you will not come into the hands of transgression: know whence you came and to where you are going and before whom you will in the future give judgment and accounting. (*m.ʾAbot* 3:1)

The parallel between these two passages is striking, I think, even without a direct correspondence between the elements of each. But there does seem to be a direct correspondence between several of the elements. "What is before" and "what is after" correspond to "whence you came" and "where you are going," both pairs referring to the situation before and after the situation of the present. "What is above" might be seen as corresponding to "before whom you will ... give judgment and accounting," especially if we take into account Rabbi's teaching in *m.ʾAbot* 2:1, a teaching which is similar to Akavya's:[93]

> And look at three things, and you will not come into the hands of transgression: Know what is above you – a seeing eye and a hearing ear and all of your deeds are written in the book.[94]

"What is above you" in Rabbi's statement refers to a judging God, the third element in the Akavya teaching, and thus we might see the first element in *m.Ḥagigah*, "what is above," as parallel to the last element in *m.ʾAbot* 3:1.

92 For *lifnim* and *leʿaḥor* as temporal rather than spatial, see Devora Steinmetz, "*Sefer HeHago*: The Community and the Book," *JJS* 52 (2001) 40–58, n.34 and Saul Lieberman, *Tosefta Ki-Fshuṭah, Moʿed* (3 vols.; New York: Jewish Theological Seminary of America, 1962) 3:1295. *T.Ḥag.* 2:7 has "what was and what will be in the future."

93 Finkelstein sees both *m.ʾAbot*'s condensation of Akavya's teaching (the four-part version of which he takes to be original) into a three-part teaching and the further condensation and alteration of the teaching as it appears in Rabbi's name as protections against possible heretical understandings of the teaching in the form in which it appears in *ʾAbot deRabbi Nathan*; see *Mavoʾ*, 64–67. The relationship between Rabbi's teaching and Akavya's teaching merits further investigation; see nn.94 and 96, below.

94 Rabbi's teaching differs in form both from Akavya's in *m.ʾAbot* and in *ʾAbot deRabbi Nathan* and from the teaching in *m.Ḥagigah*. Both versions of Akavya's teaching introduces each element with a new word such as "whence," "to where," etc., while the teaching in *m.Ḥagigah* introduces each element with the word "what." In contrast, the teaching of Rabbi has only a single "what" that seems to introduce all three elements, even though the introductory "Know what is above you" does not relate smoothly to the third element – "and all of your deeds are written in the book." This might be taken to support the notion that Rabbi's teaching is an adaptation of one or more of these other teachings; see above, n.93, and below, n.96.

The difference between the *m.Ḥagigah* passage and the *m.ʾAbot* passage, of course, is in the domain of speculation that each addresses. The four things that one is forbidden to look at in *m.Ḥagigah* relate to the esoteric domain, mentioned earlier in that same *mishnah*.[95] The things at which one is enjoined to look in *m.ʾAbot*, in contrast, relate to an awareness that allows for ethical behavior[96] – "and you will not come into the hands of transgession."[97] Thus,

95 Note that the material about the dangers of esoteric speculation comes in *t.Ḥagigah* between the parallel to the first part of *m.Ḥagigah* 2:1 and the parallel to the second part of that *mishnah*; compare the *sugyot* in the *Yerushalmi* and *Bavli*. For the possibility that the forbidden speculation here relates to gnosticism, see Lieberman, *Tosefta Ki-Fshuṭah, Moʿed*, 2:1292–93 and Albeck, *Seder Moʿed*, 510–11. See further below, nn. 97, 98 and 106. For the gnostic concern with "where he comes from and where he is going" and with what is "above," see Filoramo, *A History of Gnosticism*, 38–41, especially the quotations on p. 39. For a discussion of the question of gnosticism and Judaism, see Robert McL. Wilson, "'Jewish Gnosis' and Gnostic Origins: A Survey," *HUCA* 45 (1974) 177–89.

96 Note that Rabbi's similar teaching in *m.ʾAbot* 2:1 ends with a focus on deeds. Note, also, the similarity of Rabbi's teaching to the teaching in *m.Ḥagigah*: "what is above" – *m.Ḥag.* 2:1; "what is above you" – *m.ʾAbot* 2:1. Note the conflation of "what is above you" and "whence you came and to where you are going" in the ethical exhortation in *Pereq Yetzirat Havlad*, published by Michael Higger, "The Formation of the Child," in *Occident and Orient*, 253–59.

97 It is, of course, possible that Akavya's teaching as formulated in *m.ʾAbot* has behind it a teaching with a different meaning than the ethical meaning expressed by the *m.ʾAbot* formulation. Note that there are a variety of explanations of "whence" and "to where" in the two versions of *ʾAbot deRabbi Nathan* and in *m.ʾAbot* (see further below, n. 106); see also *Derekh Ereṣ Rabbah* 3 (= *Pirqei ben Azai* 1 in Michael Higger, ed., *Masekhtot Deretz Eretz* [New York: De-be Rabbenan Press, 1935] 155–58) and the discussion in Lieberman, *Tosefta Ki-Fshuṭah, Moʿed* 3:1293 (about which see Kister, *Iyunim*, 107). The explanations in *m.ʾAbot* support the ethical meaning of Akavya's teaching, while some of the explanations in these other sources suggest esoteric meanings or a response to esoteric teachings. See Saldarini, "The Adoption of a Dissident," for a review of the literature that sees Akavya's statement as reflecting or responding to esoteric, perhaps sectarian, teachings. Similarly, Yehuda Liebes, *Ḥet'o shel Elisha* (Jerusalem: Magnes Press of the Hebrew Univ., 1990) 105–6, suggests that esoteric teachings underlie the teachings of the students of Rabbi Yoḥanan ben Zakkai in *m.ʾAbot*. These understandings raise the possibility that *m.ʾAbot* transforms teachings that might be dangerous (see below) into teachings that sustain the community and protect its members – a possibility similar to the suggestion made earlier that *m.ʾAbot* transforms traditions of conflict and fragmentation into a portrait of a harmonious community.

Sharvit, *Nusḥa'oteha*, 19, notes that *m.ʾAbot*'s explanation of "to where you are going" – "to a place of dust, worms, and maggots" – is missing the word "dust" in the manuscripts. Sharvit notes that the words *rimah* and *tolei'a* – "worms" and "maggots" – are not rabbinic Hebrew, and he cites Job 25:6 and Isa 14:11 as possible sources of this pair of words; the former is quoted as a prooftext in *ʾAbot R. Nat.* A, 19. The latter verse is particularly interesting as a possible source of the explanation of "Know... to where you are going," since it occurs in a prophecy against Babylonia that is discussed in the *Bavli* on *m.Ḥag.* 2:1 (*b.Ḥag.* 13a) in a *midrash* attributed to Rabban Yoḥanan ben Zakkai. The *midrash* tells that Nebuchadnezar, like his ancestor Nimrod (according to the midrashic tradition that Nimrod is the leader of the builders of the Tower

the person in *m.ʾAbot* is enjoined to consider whence *he* came and where *he* is going; the questions are about the nature of the human being and his place within the world and vis à vis God.[98] The person in *m.Ḥagigah* is enjoined not to consider what was before and what will be after *the world*, what is above the world as we know it and what is below it. Such speculation leads to dangers amply illustrated in Tosefta, *Yerushalmi*, and *Bavli Ḥagigah* – madness,[99] death, and apostasy[100] – with the rare sage being exempt from this peril.[101]

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of Babel) thinks to ascend (*ʾeʿeleh*) on high and be like the Most High (*leʿelyon*) (Isa 14:14) but, instead, will descend to She'ol (14:15). In pointing out the impossibility of ascending on high, the midrash describes what is above (*lemaʿalah*) and how vast it is. The implication of this story and its placement in *b.Ḥag.* is that esoteric speculation — in particular, looking at "what is above" — is a rebellion against God, similar to the rebellion of those who challenge the boundaries between human beings and God. *M.ʾAbot*'s recommendation that one recognize that one is going to a place of "worms" and "maggots," if based on Isa 14:11 and the midrashic tradition on this passage that is found in the *Bavli*, can be seen as a warning against esoteric speculation as well as as an ethical teaching — with respect to both domains, one must understand one's human limitations. (See further, with respect to Isa 14:11, n.103, below.) Liebes, *Ḥet'o shel Elisha*, argues for a relationship between forbidden esoteric speculation and ethics; and he claims that the sin of Elisha ben Avuya (of whom he thinks that Nimrod is an archetype in *b.Ḥagigah*) lies not in mistaken beliefs but in hubris and disrespect toward God (see especially his discussion on 119–120 of *y.Ḥag.* 2:1, 77c, and *Bereshit Rabbah* 1:5 [and compare *b.Ḥag.* 16a] and see *ʾAbot R. Nat.* A, 19, where a similar parable is used to illustrate the lowliness of the human being). The addition of "dust," found in *ʾAbot deRabbi Nathan* and in the printed editions of *m.ʾAbot*, recalls Abraham's statement, "I am dust and ashes" (Gen 18:27). It is possible that the full version, "dust, worms, and maggots," is a midrashic conflation of the statement of Abraham with the fate of Nebuchadnezzar/Nimrod; Abraham recognizes his human limitation, while Nebuchadnezzar/Nimrod does not. For Nimrod and Avraham as archrivals, see Devora Steinmetz, *From Father to Son: Kinship, Conflict, and Continuity in Genesis* (Louisville: Westminster/John Knox Press, 1991) 196 (n.34), 198 (n.40), and 199 (n.45). (The inclusion of "dust" can also be accounted for by the parallelism with "worms" in Job 21:26, in reference to the fate of human beings.)

98 Similarly, the inclusion of the word "you" in Rabbi's teaching (see n.96, above) translates the phrase "what is above" into the ethical domain. It is important to note, though, that the distinction between the esoteric and ethical domains does not lie only in the difference between the focus on the origin and fate of the world versus of the person; indeed, some of the explanations in *ʾAbot deRabbi Nathan* which have been understood as possibly referring to esoteric speculation, particularly to gnosticism (see secondary literature cited in n.97, above), do relate to the origin and fate of the person. The focus on the ethical domain in *m.ʾAbot*, rather, lies specifically in the particular explanations that are given to "whence," "to where," etc. as well as, possibly, in the omission of the third element — "what is to be in the future" — and its assimilation to the notion of judgment (see nn.90 and 93, above).

99 See Lieberman, *Tosefta Ki-Fshuṭah*, *Moʿed*, 3:1294, on traditions about ben Zoma's fate.

100 For a review and critique of the scholarship on Elisha ben Avuya, see Liebes, *Ḥet'o shel Elisha*.

101 The noteworthy example in these sources is Rabbi Akiva — see *t.Ḥag.* 2:4, *y.Ḥag.* 2:1, 77b, *b.Ḥag.* 14b; *b.Ḥag.* 15b notes that even Rabbi Akiva barely escaped danger. The *baraita* in the Tosefta,

In *m.Ḥagigah* the perils of esoteric speculation are not spelled out, but it is worth looking at the context of the teaching about the four things for some clues at to what is at stake. This teaching occurs within a series of *mishnayot*[102] that includes reference to a sage who has forsaken (*poresh min*) Torah (1:7),[103] categories of law that have more or less tenuous relationships to Scripture, or

Yerushalmi, and *Bavli* cites Song 1:4 in relation to Rabbi Akiva's entering in peace and leaving in peace. *Shir Hashirim Rabbah*, on the section of Song 1:4, "The king has brought me into his chambers," cites the tradition about Rabbi Akiva and then adds the following tantalizing explanation: "And he said, not because I am greater than my colleagues, rather thus our sages taught in the Mishnah – 'Your deeds will bring you near and your deeds will distance you.'" This source has Rabbi Akiva explaining his non-exclusion by quoting Akavya's teaching on inclusion/exclusion in *m.ᶜEd.* 5:7 – a teaching which I have suggested above corresponds to the basis for inclusion in the community in *m.ᵓAbot*. For Akavya/Akiva, see the appendix to this article. See n.86 for traditions about Rabbi Akiva's emphasis on the importance of deeds. See also the story in *b.Ḥag.* 15a and especially *y.Ḥag.* 77b in which Aḥer teaches Rabbi Meir about Rabbi Akiva's exegeses that emphasize the importance of deeds and the ability of a person to be redeemed, and note the plea of Aḥer's daughter in *b.Ḥag.* 15b not to look at Aḥer's [bad] deeds. (Note the teachings attributed in *ᵓAbot R. Nat.* A, 24, to Elisha ben Avuya concerning the importance of deeds along with Torah learning; see Liebes, *Ḥet'o shel Elisha*, 56.) See also Lieberman's comments on *na'eh doresh vena'eh meqayem* (*t.Ḥag.* 2:1; see *y.Ḥag.* 2:1, 77a and *b.Ḥag.* 14b) in *Tosefta Ki-Fshuṭah*, *Moᶜed*, 3:1288, and see Liebes, *Ḥet'o shel Elisha*, 99–103.

102 Epstein, *Mevoᵓot*, 46–52 sees *m.Ḥag.* 1:8–2:4 as an ancient collection of *halakhot*, with 1:8 to 2:1 serving as the introduction to the rest of this collection (beginning with the dispute about *semikhah* – see below) and to a second pair of ancient collections, 2:5 through the end of the tractate.

103 According to Epstein, *Mevoᵓot*, 48, *m.Ḥag.* 1:7 is added later, from the Tosefta; nevertheless, I am taking this *mishnah* to be a bridge between the first part of the tractate and this next part, introducing, with the notion of a sage who forsakes Torah, the idea of domains of Torah that are dangerous or divisive. The parallel passage in the Tosefta, *t.Ḥag.* 1:8, quotes additional verses to describe the sage who forsakes; note especially Jer 2:5 and the use there of *rḥq* (note also the citation of Prov 27:8 and the use of *qrv* and *rḥq* in 27:10). See also *ᵓAbot R. Nat.* A, 36, which cites Jer 2:5 along with Num 15:31, a passage about *karet*; note the citation in *t.Ḥag.* also of Ps 37:21 and the reference to *krt* in the following verse. The sage who forsakes, then, is described as *distant* (see nn.33–34, above) and as *cut off* (see n.14, above) from the community.

Note that in *b.Ḥag.* 15a Aḥer expresses his inability to "return," as Rabbi Meir urges him to do after Aḥer has told Rabbi Meir to "return" because they have reached the Shabbat boundary. Immediately thereafter, Aḥer hears Isa 57:21: *There is no peace . . . for the wicked.* The statement about the fate of the wicked comes in Isaiah after the declaration, *Peace, peace for the far and for the near* (57:19). Aḥer, then, is beyond one who is *raḥoq* – he is completely and irrevocably outside of the boundaries of the community. See nn.33 and 34, above, for exegeses of Isa 57:19 in reference to membership in the community and to the ability to "return." See n.106, below, for the motif of "outside."

Note the juxtaposition of Eccl 1:15, quoted in *m.Ḥag.* 1:7 and in *t.Ḥag.* 1:8, with Isa 14:11 in *Ruth Rabbah* 3:3 and *Qohelet Zuta* 2 (ed. Buber, pp. 92–93); see n.97, above, on this Isaiah passage in relation to Nimrod/Aḥer in *b.Ḥagigah*. See also *Qohelet Rabbah* 4:5, which quotes Eccl 4:5, discussed in the *Ruth Rabbah* and *Qohelet Zuta* passage together with Eccl 1:15 and Isa 14:11, in relation to one who learned Torah and then forsook it.

none at all (1:8),[104] subjects that must not be expounded in public (2:1),[105] a dispute about *semikhah* that spans generations of sages (2:2), and, finally, a related set of disputes between Bet Shammai and Bet Hillel that is connected as well to a dispute about when the festival of Shavuot falls (2:3–4). The teaching about esoteric speculation, then, is juxtaposed with halakhic concerns, and these two domains are associated with dispute, fragmentation, and the loss of individuals from the community.[106]

The dispute about *semikhah* is particularly striking; *m.Ḥag.* 2:2 presents each of the *zugot* as split over this issue.[107] Interestingly, rabbinic sources present this

104 Halakhic innovations such as annulment of vows can be the focal point of divisiveness and fragmentation; compare the tradition about *taharat yadaim* in *m.ᶜEd.* 5:6, and see n.13, above and Steinmetz, "*Sefer HeHago*," n.31. Note that *m.Ḥag.* 1:8 uses the word *smk* in its characterization of annulment of vows, linking this to the dispute about *semikhah* in *m.Ḥag.* 2:2 and perhaps alluding to the potential for divisiveness in the former. See Leibes, *Ḥet'o shel Elisha*, 107–9, about the commonality between halakhic innovation and esoteric speculation, and see the appendix to this article on Rabbi Akiva as expert in both these domains.

105 What the concern is in relation to public exposition of *ᶜarayot* (*m.Ḥag.* 2:1) is unclear. See Leibes, *Ḥet'o shel Elisha*, 139–41, for a review of approaches to this question. Epstein, *Mevoʾot*, 49–50, suggests as one possibility the concern that this would reveal families who are disqualified from marrying within the community; he cites *m.ᶜEd.* 8:3 and 8:7 and *t.ᶜEd.* 3:4. According to this possibility, the prohibition against public exposition of *ᶜarayot* is a protection against exclusion from the community, different from but parallel to the exclusion that can arise from exposition of esoteric teachings. Note that *ᶜarayot* and the sage who has forsaken are juxtaposed in *m.Ḥag.* 1:7. See also Albeck, *Seder Moᶜed*, 511 and Lieberman, *Tosefta Ki-Fshuṭah, Moᶜed*, 3:1286 on other possible parallels between the danger of exposition of *ᶜarayot* and of esoteric teachings, in particular the possibility that both relate to speculation on the origins of the world in a manner that leads to disrespect.

106 Loss of the individual is associated in related sources with the motifs of being "distant" and, more extremely, being "outside." See n.103, above. The motif of "outside" appears in the *aggadot* about Aḥer in *y.Ḥag.* 2:1, 77b and *b.Ḥag.* 15a; in the former, Rabbi Meir is told that his master is "outside," and both include the image of Aḥer continuing outside of the Shabbat boundary, while Rabbi Meir remains within. "Outside" is used also in relation to ben Zoma in *t.Ḥag.* 2:5, *y.Ḥag.* 2:1, 77a-b, and *b.Ḥag.* 15a. Note the question "whence and to where" posed by Rabbi Joshua to ben Zoma in these sources and compare to Akavya's teaching in *m.ʾAbot* 3:1; see Lieberman, *Tosefta Kifshutah, Moᶜed*, 3:1292–94 for the possible relationship between the conversation between Rabbi Joshua and ben Zoma and gnosticism (see also nn.95, 97, and 98, above), and see Liebes' critique in *Ḥet'o shel Elisha*, 112–15. Of course, Rabbi Joshua's question could simply be read as a conventional greeting that initiates dialogue in literary sources, along the lines of the angel's question to Hagar in Gen 16:8 or the greeting familiar from platonic dialogues (see, for example, the openings of *Phaedrus* and of *Lysis*); in the context of *m.Ḥag.* 2:1, with its similarity to *m.ʾAbot* 3:1, though, this question and ben Zoma's response highlight the dangers of esoteric speculation, which can bring someone "outside." Note that Rabbi Akiva is described as being *inside* – see the citation of Song 1:4 in the sources cited at the beginning of n.101, above.

107 The nature and significance of this dispute has been subject to much discussion; see, for

dispute as the very first dispute that mars an otherwise perfect transmission of tradition.[108] According to a tradition that appears in the Tosefta, *Yerushalmi*, and *Bavli*, it is only after the time of Hillel and Shammai that halakhic dispute becomes rampant, the process having begun, according to some of these sources, with an increase in disputes between Hillel and Shammai themselves.[109] It should be noted, too, that this particular dispute as well as those in

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example, Solomon Zeitlin, "The Semikah Controversy between the Zugoth," *JQR* NS 7 (1916–17) 499–517; Albeck, *Seder Neziqin*, 511; Elimelech E. Hallewy, "*Hamaḥloqet harishonah*," *Tarbiz* 28 (1958–59) 154–57, Lieberman, *Tosefta Ki-Fshuṭah, Moᶜed*, 3:1300.

108 See *t.Ḥag.* 2:8 and *y.Ḥag.* 2:2, 77d; see also *b.Tem.* 15b–16a. Note that the passage immediately preceding in *y.Ḥag.* (2:1, 77c–d) discusses a dispute between Bet Shammai and Bet Hillel on the creation of the world using the phrase, *neḥlequ ᶜaleha ʾavot haᶜolam*; compare *m.ᶜEd.* 1:4. This passage serves as a bridge in the *Yerushalmi* between the discussion of lack of concern for the honor of the Creator on the part of the person engaged in esoteric speculation (end of *m.Ḥag.* 2:1) and the discussion of the dispute about *semikha* (*m.Ḥag.* 2:2), concerning which the *Yerushalmi* again uses the identical phrase. Esoteric speculation and *halakhah* are juxtaposed in this *Yerushalmi* passage as the subject of dispute between the "fathers."

109 According to *y.Ḥag.* 2:2, 77d, there is a gradual process of proliferation of dispute: first, only one dispute; then, four disputes between Hillel and Shammai; finally, many disputes between the students of the schools of Hillel and Shammai. See also *b.Šabb.* 14b–15a, where the *gemara* discusses the three Hillel-Shammai disputes from the beginning of *m.ᶜEduyyot* (but see n.19, above, for Albeck's view of *m.ᶜEd.* 1:1, as evidence for which he draws on the order of the disputes in *b.Šabb.* 15a) together with the dispute about *semikhah* from *m.Ḥag.* The tradition about the proliferation of *maḥloqet* after Hillel and Shammai also appears in *t.Ḥag.* 2:9 (//*t.Sanh.* 7:1), *y.Sanh.* 1:4, 19c, *b.Sanh.* 88b, *t.Soṭah* 14:9, and *b.Soṭah* 47b. In y.*Ḥag.*, the proliferation of *maḥloqet* leads to two *kitot* (but note also the phrase *veᶜod ʾenah ᶜatidah laḥazor limeqomah*, apparently referring to Torah); in *y.Sanhedrin* and *b.Sanhedrin* and in *t.Soṭah.* and *b.Soṭah*, it leads to two *torot*. For the relationship between fragmentation of the community and fragmentation of Torah, see the discussion above on *m.ᶜEduyyot* and the analysis of the word *maḥloqet* in these and similar sources in Naeh, "*ʿAsei libkha*," especially nn.23 and 25 (and see n.4, above). See also *t.Soṭah.* 7:9–12 (//*b.Ḥag.* 3a–b; these two sources are analyzed in detail in the Naeh article; note the version of *t.Soṭah* in MS Vienna discussed by Naeh and the mention of Bet Hillel and Bet Shammai there), and note the appearance in this source of the notion of proliferation (*parin veravin*) of Torah. Naeh sees this source as highlighting the need that led to the origins of *m.ᶜEduyyot*; he understands this, though, as a wholly positive development which, however, necessitates preservation and organization (see nn.40, 43, and 44, above); see also Naeh, "*ʿAl mivnim shel zikaron*." The group of sources about the students of Hillel and Shammai uses this notion of proliferation in an unambiguously negative sense – in relation to students who did not serve their masters adequately (*misherabu*) and the attendant proliferation (*verabu*) of *maḥloqet*. Both *y.Ḥagigah* and *t.Soṭah* refer to "those who declare impure" and "those who declare pure," a phrase which appears in *m.ᶜEd.* 4:8 as well; while in *y.Ḥagigah* this represents fragmentation of the community into *kitot*, *m.ᶜEduyyot* highlights the capability of Bet Hillel and Bet Shammai to interrelate vis à vis purities and marriage despite their potentially fragmenting disagreements (but see Epstein, *Mavoʾ*, 964, and *Mevoʾot*, 104, on *m.ᶜEd* 4:8 as imported from *m.Yebam.* 1:4). (For a brief discussion of some of the sources discussed in this note,

the following two *mishnayot* relates to Temple practice,[110] specifically to Temple practice during festivals, when Jews are expected to come together in a shared celebration of the holiday. Such comings together are always occasions ripe for conflict, and, in particular, differences of practice at this time have severe implications for the ability of different groups to be able to participate together.[111]

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see Shaye J. D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis, and the End of Jewish Sectarianism," *HUCA* 55 (1984) 27–53, on p. 48 and see Sussmann, "*Heqer toldot hahalakhah*," nn. 116–19). It should be noted that the passage in *y. Hagigah* parallels the beginning, middle, and end of *m.ᶜEduyyot*:

Y. Hagigah 2:2, 77d	*M.ᶜEduyyot*
Hillel and Shammai added three disputes	the three disputes of Hillel and Shammai (1:1–3)
Proliferation of disputes among the disciples of the schools of Hillel and Shammai; fragmentation into *kitot* ("these declare impure and these declare pure")	many disputes between Beit Hillel and Beit Shammai (1:7–14; 4:1–5:5); despite this ("these declare pure and these declare impure"), these groups interrelate (4:8)
anticipated restoration in messianic age	anticipated restoration in messianic age (8:7)

Note that the passage about Akavya's exclusion occurs in *m.ᶜEd.* 5:6–7, at the conclusion of the two middle chapters of the tractate that enumerate the disputes between Bet Hillel and Bet Shammai (see n. 64, above, for Finkelstein's hypothesis that Akavya was a Shammaite). Thus, *m.ᶜEduyyot* acknowledges both the possibility (even if denying the actuality) of framentation of the community and the possibility of expulsion of dissident members in this central section of the tractate that corresponds to the tradition about the proliferation of halakhic disputes. In *t.ᶜEduyyot*, the second (and central) chapter corresponds to the fourth and fifth (and central) chapters of *m.ᶜEduyyot* in focussing on the disputes between the Houses in which Bet Shammai rules leniently and Bet Hillel stringently. Akavya appears in *t.ᶜEd.* 2:9, at the end of the series of House disputes, parallel to the position of the Akavya passage in *m.ᶜEduyyot*. Notably, Chapter Two in *t.ᶜEduyyot* is framed by disputes involving Rabbi Eliezer; *t.ᶜEd.* 2:1 includes reference to *tanur shel ʾakhnaʾi*, "concerning which *maḥloqot* proliferated in Israel" (see Rabban Gamaliel's comment in *b.B.Meṣiᶜa* 59b: "that *maḥloqet* not proliferate in Israel"; see n. 42, above, on the preceding law in *t.ᶜEduyyot* and the reference to it in *b.Sanh.* 68a). Perhaps, then, we have added support for the notion that Akavya's fate in *m.ᶜEduyyot* should be seen as an extreme manifestation of the problem of *maḥloqet* emblematized by the Houses. Perhaps, too, we should consider the traditions about Rabbi Eliezer's excommunication in relation to the tradition about Akavya and to other traditions about the proliferation of *maḥloqet* (see also nn. 15 and 46, above.)

110 Cohen, "The Significance of Yavneh," discusses the Temple as "the primary focal point of Jewish sectarianism."

111 For two examples of traditions about sectarian differences with respect to Temple practice on holidays, see *m.Yoma* 1:5 / *t.Yoma* 1:8 and *m.Sukkah* 4:9 / *t.Sukkah* 3:16; see also *t.Sukkah* 3:1 about whether *ḥibut ᶜaravah* is performed on Shabbat. See the *baraita* concerning the permissibility of bringing the *ḥagigah* sacrifice on Shabbat in *b.Pesaḥ.* 70b, dissent over which

This series of *mishnayot* concludes with a reference to a dispute about the festival calendar, the kind of dispute that was a focal point for sectarian self-definition and that would make it simply impossible for groups to join together in Temple worship.[112] It should be noted that the ability of Jews to come together in Temple worship on the holidays is, in fact, a significant concern of *m.Ḥagigah*,[113] the last part of which addresses problems that arise when people who have different standards of ritual purity come together or trade with one another at the time of the festivals.[114]

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leads to separation of the dissenter from the community. Compare the tradition about Hillel's teaching concerning bringing the paschal sacrifice on Shabbat in *t.Pesaḥ.* 4:1–2, *y.Pesaḥ.* 6:1, 33a, *b.Pesaḥ.* 66a. Both of these issues are similar to the question about which Bet Hillel and Bet Shammai argue in *m.Ḥag.* 2:3; note the conflicts relating to this question in *t.Ḥag.* 2:11–12. Whatever the bases of these disputes, Temple holiday rituals, and particularly issues relating to sacrifices and other rituals on holy days, appear repeatedly in rabbinic texts as focal points of dispute.

112 Bar-Ilan, "The Reasons for Sectarianism," identifies the calendar as well as purity of *qodesh*, *ḥattat*, and *ḥullin* as areas of *halakhah* that could easily lead to schism and concerning which tannaitic rulings, such as those in *t.Ḥag.* 3:19 and *m.Ḥag.* 3:4, were designed to prevent such schisms. Note that the allusion to the calendar dispute in *m.Ḥag.* 2:4 immediately precedes the section of *m.Ḥagigah* that concerns ritual purity.

113 This issue is foregrounded more in *t.Ḥagigah* For example, *m.Ḥagigah* begins by asserting that all are obligated to appear in the Temple on the festivals and then giving a list of those to whom this obligation does not apply; *t.Ḥagigah* begins with the exemption of the person who is impure, deriving this law from the notion that this person is not fit to enter the *ʿazarah* (for being inside the *ʿazarah* as representing membership in the community, see nn. 35 and 68, above). The possibility of conflict and schism over Temple ritual and purity is also more apparent in *t.Ḥagigah*; see 2:11–12 (and n. 111, above), 3:19, and 3:35.

114 Whether the concern of *m.Ḥagigah* is the goal of enabling diverse groups of Jews to worship together as one community or rather the resolution of problems that are bound to arise when such Jews *do* come together is debatable; these two possibilities, indeed, reflect different primary values. As noted in the preceding note, *t.Hagigah* certainly foregrounds the issue of exclusion and fragmentation. Each of the *talmudim* includes a *derashah* in relation to *m.Ḥag.* 3:6 to show that the very gathering together of Jews (or, in the *Yerushalmi*, the gathering together of Jews in Jerusalem) renders them all *ḥaverim* (*y.Ḥag.* 3:6, 79d, *b.Ḥag.* 26a). This, again, could be understood simply as a justification for the need to accept people of diverse purity standards as *neʾemanim*, or it could be understood additionally as expressing the idea that communal unity is a positive value and a goal of the legislation of *m.Ḥagigah* (and, for the *Yerushalmi*, that Jerusalem should be a place of joining together, rather than a locus of divisiveness). The citation in *b.Ḥagigah* of Judg 20:11 is interesting, since this passage describes the ironic unification of the community in the goal of expunging the tribe of Benjamin. Note, too, the use of *lo ʿalah vaqahal* in Judg 21:5, as the people decide to destroy yet another group in order to allow the remaining Benjaminites to marry within the community. See n. 34 on *qrv/rḥq* in *y.Taʿan.* 4:11, 69c, in relation to this story in Judges and see n. 35 on *lavo baqahal*. The citation of Judg 20:11 to show how a gathering of Jews renders them *ḥaverim* might be seen to underscore the core problem of community stated at the beginning of this article — that any construction of community inevitably entails exclusion.

And so, as *m.Ḥagigah* envisions the coming together of all Jews to worship in the Temple, the central *mishnayot* of the tractate speak of the dispute and fragmentation that undermine the community's oneness. And, in this context, there are two *mishnayot* that recall *m.ʾAbot*. One, which we have already noted, is the *mishnah* about forbidden domains of esoteric speculation (*m.Ḥag.* 2:1), the passage which parallels Akavya's ethical teaching in *m.ʾAbot* 3:1. The other is the *mishnah* that describes the dispute about *semikhah* (*m.Ḥag.* 2:2), for we have here the list of *zugot* through Hillel and Shammai[115] familiar from the beginning of *m.ʾAbot*, but here the *zugot* represent the fragmentation of the community in dispute, rather than the unbroken tradition that they are said to receive and transmit at the beginning of *m.ʾAbot*.

We can turn back now to look at Akavya's ethical teaching in *m.ʾAbot* against the backdrop of both his four halakhic teachings in *m.ʿEduyyot* and the four forbidden areas of speculation in *m.Ḥagigah*. The choice of ethical material in *m.ʾAbot*, I have suggested, is dictated by the desire to form a common ground on which *m.ʾAbot* can paint its portrait of a community that neither is fragmented by dispute nor forced to expel dissident members. In *m.ʾAbot* we have the list of *zugot* that we find in *m.Ḥagigah* locked in dispute from generation to generation, but in *m.ʾAbot* they are undivided by dispute. These *zugot* culminate with Hillel and Shammai, who, in *m.Ḥagigah* (and more explicitly in related traditions) are associated with further disputes and with whose disputes *ʿEduyyot* begins – but who, in *m.ʾAbot*, are *both* presented as those from whom Rabban Yoḥanan ben Zakkai receives Torah. In *m.ʾAbot*, we have the chain of tradition from Moses/Sinai to Rabban Yoḥanan ben Zakkai that is invoked at the end of *m.ʿEduyyot*, but in *Eduyyot* this claim to unruptured tradition itself gives way to dispute, while in *m.ʾAbot* this tradition is unruptured and admits no controversy. And, most strikingly, in *m.ʾAbot* we have the teaching, in a central position, of the sage who is expelled from the community at the center of *m.ʿEduyyot*.[116]

115 Schechter, *Avot deRabbi Natan*, xxiv–xxv, notes the similarity and hypothesizes that the chain of transmission in *m.ʾAbot* is taken from *m.Ḥagigah* to give authority to the teachings of *m.ʾAbot*. Neusner, *Rabbinic Traditions*, 11–23, sees *m.ʾAbot* 1:1 and *m.Ḥag.* 2:1 as two of three "chains of pharisaic tradition," the third being in *b.Šabb.* 14b (with parallel in *y.Šabb.* 1:4, 3d); see n.109, above, on the continuation of this passage in *b.Šabbat*. For another possible link between *m.ʾAbot* and this series of *mishnayot* in *m.Ḥag.*, see *m.Ḥag.* 1:8 and *m.ʾAbot* 3:18, the final *mishnah* in Chapter Three (but see n.85, above).

116 *M.ʾAbot* also includes, uniquely in the Mishnah, a teaching of Elisha ben Avuya (see n.64, above), the sage whose loss to the community is described in Tosefta, *Yerushalmi*, and *Bavli Ḥagigah* in relation to the domain of esoteric speculation described in *m.Ḥagigah*. See n.46, above, for the notion that omission of a sage's teachings from the textual tradition is equivalent to expulsion from the community. It is interesting that Rabbeinu Shimʿon bar Tzemach Doran (Rashbatz), in *Magen Avot* on *m.ʾAbot* 4:20, comments that the *mishnah* that includes

ʾABOT AND ʿEDUYYOT

Since at least the latter part of the nineteenth century, scholars have argued about the essence of *m.ʾAbot*. Some have claimed that the essential part of the tractate is the historical material and that the agenda of *m.ʾAbot* is to justify rabbinic authority to interpret Torah by linking the sages to an unbroken tradition that goes back to Sinai. Others have claimed that the essence of the tractate is the ethical teachings.[117] The approach that I have been suggesting here looks at both elements as jointly serving a common purpose and highlights also two other characteristics of *m.ʾAbot*, not often commented upon – the absence in this tractate of dispute and the inclusion of the teachings of sages who other rabbinic traditions say were expelled from the community or whose teachings have not been preserved.[118]

I have suggested that *m.ʾAbot* is addressed to ideas and issues highlighted in *m.ʿEduyyot*: the idea that the Mishnah is a response to a perceived rupture in tradition and fragmentation of Torah and community; that the attempt to achieve cohesiveness within the community and unity of Torah is, at best, partial; and, moreover, that such cohesiveness entails expulsion of those who might be seen to fragment the community. *M.ʾAbot*, by focusing on the domain of ethical/religious conduct, picks up on the common commitment highlighted by Akavya's teaching in *m.ʿEduyyot* itself as that which determines who must be accepted within the community. Building on that common ground, *m.ʾAbot* constructs a vision of the kind of community that *m.ʿEduyyot*

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the teaching of Elisha ben Avuya was omitted from prayerbooks because "the name of the wicked shall rot" (Prov 10:7). In a sense, the action of the community reported by Rashbatz with respect to the liturgical text of *ʾAbot* imitates the Mishnah's general omission of the distanced sage, and highlights the striking inclusiveness of *m.ʾAbot*.

117 On this debate, see Frankel, *Darkhei hamishnah*, 27; Schechter, *Avot deRabbi Natan*, xxiv–xxv; D. Hoffmann, *Hamishnah harishonah uplugta detanaʾei* (Berlin: Vaʾad hayovel shel talmidei bet midrash larabbanim, 1913) 28; Herford, "Pirke Aboth"; Guttmann, "Tractate Abot"; Herr, "*Haretzef*." (Discussion of this issue predates modern scholarship, as would be expected; see, for example, Meiri's introduction to *m.ʾAbot*, which anticipates Schechter's explanation of the role of the chain of transmission in a tractate the focus of which is ethical teachings.) Both scholars who see the chain of transmission as primary and those who see it as secondary offer a variety of historical settings and related rationales for the chain of transmission.

118 On not preserving a sage's teachings (or preserving them, but not transmitting them in his name) as equivalent to expulsion from the community, see nn. 46 and 116, above, especially the sources concerning transmission of Rabbi Eliezer's teachings. Note also *b.Hor.* 13b, concerning Rabbi Meir (and note Tosafot's interpretation of the term *ʾaḥerim* for Rabbi Meir in relation to Elisha ben Avuya – *b.Soṭah* 12a, s.v. *ʾaḥerim*), and note the tradition that Rabbi Meir was nearly excommunicated in *y.Moʿed Qat.* 3:1, 81c, immediately preceding the story of Rabbi Eliezer's excommunication.

imagines has been lost and can only be achieved in the messianic age.[119]

It is tempting to suggest that *m.ʾAbot* should be seen not only as a response to the issues underlying *m.ʿEduyyot* but as a response, or counterpoint, to *m.ʿEduyyot* itself. Several of the elements discussed above do support such a hypothesis, in particular the central place of Akavya's teachings in both tractates, with which I began my discussion. Beyond this, the place of these tractates in the corpus of the Mishnah might also support such a claim.

Many questions still need to be answered about the order of tractates,[120] but most often the presence of a tractate in a given *seder* is self-explanatory.[121] But the presence of both *ʾAbot* and *Eduyyot* in *Seder Neziqin* has been difficult to explain based on the content of the tractates. A preferable explanation is that each of these tractates might be seen as a kind of epilogue to the Mishnah as a whole.[122] *Eduyyot* serves as an explanation of the process and problems that it understands as underlying the development of the Mishnah: the beginning of *t.ʿEduyyot* describes what precipitated the collection and organization of traditions, and *m.ʿEduyyot*, I have suggested, highlights the problems of rupture, fragmentation, and exclusion. Thus, *m.ʿEduyyot* can be read as an explanatory epilogue[123] to the Mishnah.

119 If fragmentation of Torah and community is seen as resulting from distance from the divine source of Torah, as discussed above – or if, conversely, that very distance from God is seen to result from disunity among God's people (as in traditions that link the destruction of the Second Temple to internecine hatred and conflict) – then establishing a unified community with a shared commitment to Torah can be seen to reestablish the connection to the divine source of Torah. See n.88, above, for the portrayal of such a community in Chapter Three of *m.ʾAbot*. Thus, we might see *m.ʾAbot* as *denying* the rupture that *m.ʿEduyyot* highlights, or we might see the vision of community that *m.ʾAbot* constructs as *repairing* that rupture and *restoring* the connection to the divine source of Torah.

120 While it is commonly accepted that the current order of Mishnah tractates corresponds to the number of chapters, in descending order, the order is much more varied when one looks at a variety of witnesses and at the talmudim and Tosefta. See Epstein, *Mavoʾ*, 980–89.

121 One notable exception to this generalization is *Berakhot*. The question of *Berakhot*'s placement might be seen to parallel the issue of the placement of *ʿEduyyot* and *ʾAbot*, as some have suggested seeing *Berakhot* as a first, or introductory, tractate, rather that as a tractate whose content determines its placement within a particular *seder*. See, for example, Meiri's introduction to *Berakhot*, and see Epstein, *Mavoʾ*, 988.

122 See Epstein, *Mavoʾ*, 985 for the order of tractates in *Seder Neziqin*. Note that MS Munich has *m.ʿEduyyot* at the end of *Neziqin*. Guttmann ("Tractate Abot") notes that *m.ʾAbot* is appended with the minor tractates (and, like them, written in smaller letters) to the end of the Talmud in ms. Munich, and he notes that Maimonides locates *m.ʾAbot* at the end of *Neziqin*. R.T. Herford ("Pirke Aboth"), Guttmann, and Dinur (*Masekhet Avot*) all suggest that *m.ʾAbot* be seen as the final tractate of the Mishnah; Guttmann sees *m.ʾAbot* as a late addition to the corpus of the Mishnah, while Herford introduces the notion of *m.ʾAbot* as "an epilogue to the Mishnah."

123 It may be noteworthy that *m.ʿEduyyot* ends by quoting the coda to the book of Malachi, the final book of the Prophets. If this is significant, its significance may be that *m.ʿEduyyot* is describing what it sees as the end of an era, similar to the end of the prophetic era; compare the

M.ʾAbot, then, could be seen as a sort of epilogue to the epilogue – a response or counterpoint to the problems set out in *m.ʿEduyyot* as underlying the development of the Mishnah. *M.ʾAbot* responds by constructing an alternative vision of community and Torah that denies a place to rupture,[124] fragmentation, and exclusion. These two tractates, then, stand in counterpoint to each other, offering portraits of a real[125] and an imagined community and seeking ways to construct a community bound by Torah and inclusive of all who want to belong.

Appendix
Akavya and akiva

A number of rabbinic sources, taken together, suggest that we might see a link within rabbinic tradition between Akavya, the sage who is expelled, and Akiva, the paradigmatic representative of rabbinic culture. Below, I will list a variety of sources that might point to such a link.

1. *M.Negaʿim* 5:3 (//*Sifra Tazria* 3; cp. *m.ʿEduyyot* 5:6)

 Seʿar pequdah – Akavya ben Mahalalel declares impure, and the Sages declare pure.

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citation in *t.ʿEd.* 1:1 of Amos 8:11–12 concerning the day when no one will be able to find God's word and the notion that anticipation of such a day precipitates the activity of collecting traditions at Yavneh (see n.38, above, for an interpretation of *m.ʿEduyyot*'s concluding exegesis of Malachi in relation to *t.ʿEd.* 1:1; here, though, I am making a point not about the content of the Malachi quotation and its exegesis but simply about the fact that this quotation is from the final passage in Prophets). It is also possible, though, and more relevant to the current argument, that the quotation of the end of Malachi signals that, like the passage that it concludes by citing, *m.ʿEduyyot* is the closing book of a corpus.

124 It is interesting, in this regard, to consider the geonic tradition that links the custom of reciting *ʾAbot* on Shabbat afternoon to the death of Moses at that time. As suggested in n.38, above, the final *mishnah* of *m.ʿEduyyot* interprets elements of Malachi, Chapter Three, including 3:22: *Remember the Torah of Moses my servant....* I have suggested that the idea of forgetting and loss of access to Torah is critical to *m.ʿEduyyot*, and that *ʾAbot* responds by denying this rupture. The idea that reciting *ʾAbot* is a response to the awareness of Moses' death (see n.3, above, for a source that links the death of Moses with forgetting laws and with the generation of doubts about the law) parallels the idea that *ʾAbot* is a response to a tractate for which loss of Torah is a central concern. On the custom of reciting *ʾAbot* on Shabbat afternoon, see Shimon Sharvit, "*Minhag haqeriʾah shel ʾAvot beshabat*," *Bar Ilan* 13 (1977) 169–87 and Jacob Gartner, "*Lamah hinhigu hage'onim 'amirat 'ʾAvot' beShabbat*," *Sidra* 4 (1988) 17–33.

125 By the word "real" I do not mean to imply that this is a factual description of the community and its problems; I mean to suggest that *m.ʿEduyyot* describes a world as its shapers see it to be, as opposed to *m.ʾAbot* which describes a world not as its shapers see it to be but as they imagine it ideally should be.

What is *se^car pequdah*? If someone had a bright spot and in it was a white hair; the bright spot disappeared and left the white hair in its place and then reappeared – Akavya ben Mahalalel declares impure, and the Sages declare pure.

Said Rabbi Akiva: I acknowledge (*modeh ʾani*) in this case that he is pure – what is *seʿar pequdah*? If someone had a bright spot the size of a split bean and in it were two hairs, and the size of half a split bean disappeared from it and left a white hair in the place of the white spot and then reappeared.

They said to him: Just as they voided the words of Akavya, so your words are not established.

While this is not the only source in which Rabbi Akiva uses the term *modeh ʾani* in reference to a previously cited dispute in which he is not named as a participant (see *m.Hor.* 1:2 and *m.B.Bat.* 9:10//*t.B.Bat.* 10:13), the particular construction of this *mishnah* creates an identification between Akiva and Akavya (contrast *t.Ed.* 2:9//*t.Bek.* 2:18, in which, similarly, there is a discussion about which case was subject to dispute between Akavya and the sages, but in which the person who clarifies the dispute is not identified with Akiva), an identification that is reflected in the Sages' response to Akiva, with its comparison of the reception of Akavya's teaching and of Akiva's teaching.

2. *Y.Roš Haššanah* 1:5/57b (cp. *b.Roš Haš.* 22a and see n. 23, above)

   Said Rabbi Judah haNaḥtom: God forbid – Rabbi Akiva was not excommunicated, rather it was. . . .

   M.ʿEduyyot 5:6 –

   Said Rabbi Judah: God forbid that Akavya was excommunicated. . . . but whom did they excommunicate. . . .

3. *Y.Soṭah* 2:5/18b –

   Rabbi Yuda said: Nehemiah *ʾish sikhin* testified before Rabbi Akiva: A woman can drink [the bitter water as a *soṭah*] and do so again.

   Said Rabbi Akiva: I will explicate – from one man a woman does not drink and do so again; from two men a woman does drink and do so again.

   And the Sages say: Whether from one man or from two men a woman drinks and does so again. Korkemit proves it – for she drank and did so again and did so a third time before Shemayah and Avtalyon from one man.

[The *Yerushalmi* goes on to discuss the dispute between Akavya and the Sages in *m.ᶜEd.* 5:6 concerning a convert and a freed slave. Printed editions as well as MS Leiden have Rabbi Akiva instead of Akavya; commentaries note that the reading should be Akavya. Confusion of Akavya and Akiva occurs elsewhere; for example, Rabbi Akiva is substituted for Akavya in some manuscripts in the last sentence of *m.Neg.* 5:3, the source in the first example, above.]

This source juxtaposes a dispute between Akiva and the Sages with a discussion of the dispute from *m.ᶜEduyyot* between Akavya and the Sages. It is striking that, as is the case with the dispute in *m.ᶜEduyyot*, the Sages cite the case of Korkemit, a woman who came before Shemayah and Avtalyon as a *soṭah*, in order to counter the opposing position.

4. *Šir HaŠirim Rabbah* 1:27 (cf. *m.ᶜEd.* 5:7 and see nn. 86 and 101, above)

> Rabbi Akiva entered in peace and came out in peace, and he said: It is not because I am greater than my colleagues, but thus taught the Sages in the Mishnah: "Your deeds will bring you near, and your deeds will distance you." And concerning him it was said: *The king has brought me into his chambers* (Song of Songs 1:4).

In this version of the story of the four who entered *pardes*, Rabbi Akiva cites Akavya's teaching to explain his ability to enter and leave in peace. Note that entering the king's chambers may be seen as representing entering the *pardes* as well as serving as a metaphor for Rabbi Akiva's remaining an insider (in contrast to the fate of his colleagues and especially of Elisha ben Avuya – see nn. 103 and 106, above, for the motif of being *out*side). It is striking that, in order to explain how he escaped the fate of his fellows, Akiva cites the teaching of the excluded sage, Akavya.

5. *M.ʾAbot* 3:1 –

> Akavya ben Mehalalel says . . .

The second part of Chapter Two of *m.ʾAbot* traces rabbinic tradition from Hillel and Shammai to Rabban Yoḥanan ben Zakkai and then discusses the qualities and teachings of Rabban Yoḥanan ben Zakkai's five students. If we were to read on with the anticipation that the line of central rabbinic figures will continue to be traced to the next generation, we would anticipate Chapter Three beginning with Rabbi Akiva, the central figure within rabbinic tradition in the following generation and the student, according to a variety of rabbinic

sources, of two of Rabban Yoḥanan ben Zakkai's students, Rabbi Eliezer and Rabbi Joshua. (For inclusion of the teachings of Rabbi Tarfon at the end of Chapter Two, see n. 7, above. The appearance of Rabbi Tarfon, in any event, only increases the expectation that we will next encounter figures of that generation, primary among them Rabbi Akiva.) It is precisely in this location that we encounter instead the teaching of Akavya ben Mehalalel. (Note that Akavya's teaching is followed in *m.ʾAbot* by the teaching of Rabbi Ḥanina *segan hakohanim*; in *m.ʿEd.* 2:1–2, Rabbi Akiva is associated with the teachings of this sage.) Rabbi Akiva's teachings come only toward the end of Chapter Three, accompanied by teachings of other figures that correspond to the expected chronology, Rabbi Ishmael and Rabbi Eleazar ben Azariah, and followed, at the beginning of Chapter Four, by the teachings of ben Zoma and ben Azzai. (See nn. 81 and 87, above, for attempted explanations of the presence of the teaching of Rabbi Eleazar Ḥisma at the end of Chapter Three.) I am suggesting, then, that Akavya appears in *m.ʾAbot* in the place where we might well have expected to find Akiva.

6. *Sifre Bemidbar* 7 (p. 11; cp. *m.ʿEd.* 5:6)

. . . and they excommunicated him [= Akavya], and he died under excommunication, and the court stoned his coffin.

Sifre Bemidbar 105 (p. 103)

Rabbi Judah ben Beteira says:

Anyone who says that Aaron was stricken with leprosy will give an accounting in the future; if the-One-who-spoke-and-the-world-came-to-be covered over him, you are revealing him?!

Anyone who says that Zelophehad was the wood-gatherer will give an accounting in the future; if the-One-who-spoke-and-the-world-came-to-be covered over him, you are revealing him?!

Anyone who says that Akavya was excommunicated will give an accounting in the future.

Sifre Bemidbar 113 (p. 122; cp. *Sifre Bemidbar* 133 [p. 177])

They found a man gathering wood (Num 15:32) . . . And who was he? He was Zelophehad, the words of Rabbi Akiva. . . . Rabbi Judah ben Beteira says: Anyone who says . . .

B.Šabbat 96b–97a

Our Rabbis taught: The wood-gatherer was Zelophehad . . . the words of Rabbi Akiva. Rabbi Judah ben Beteira said to him: Akiva, one way or the other you will give judgment in the future – if it is in accordance with

> your words, the Torah covered him and you are revealing him, and if not you are casting stigma upon that righteous man . . .
>
> Similarly . . . even Aaron was stricken with leprosy, the words of Rabbi Akiva. Rabbi Judah ben Beteira said to him: Akiva, one way or the other you will give judgment in the future – if it is in accordance with your words, the Torah covered him and you are revealing him, and if not you are casting stigma upon that righteous man . . .

Two of the three statements condemned by Rabbi Judah ben Beteira in *Sifre Bemidbar*, that Aaron was stricken with leprosy and that Zelophehad was the wood-gatherer, are attributed to Rabbi Akiva (one in *Sifre* itself and both in *b.Šabbat*). The third statement condemned by Rabbi Judah ben Beteira (see n. 23, above), that Akavya was excommunicated, does not appear in Rabbi Akiva's name; it appears only as an unattributed statement both in *Sifre* and in *m.^{c}Eduyyot*. While this is far from certain, it is possible that we should read these sources as suggesting that the position that Akavya was excommunicated was attributed to Rabbi Akiva.

This last example is different from the preceding ones. In examples one through five, we see Akavya and Akiva conflated, compared, or juxtaposed. Example six, if we are indeed to take the statement about Akavya's excommunication as attributed within rabbinic tradition to Rabbi Akiva, has Rabbi Akiva making a comment about Akavya that could be seen as negating an association between these two figures. Alternatively, though, one could see a tradition that has Rabbi Akiva claiming that Akavya was excommunicated as reflecting a recognition of an identification between these two figures, with Rabbi Akiva voicing the danger that threatens a figure not so different from himself. Thus, while this last example differs from the preceding ones in the kind of nexus between Akavya and Akiva, it might be taken, like them, to demonstrate a special connection between Akavya and Akiva within rabbinic tradition. (That a figure whose own inclusion is questionable – see below – is the very one who draws boundaries on inclusion should not be surprising. This might be reflected in the roles of Rabbi Akiva in the *Yerushalmi* and *Bavli* versions of the story of Rabban Gamaliel's deposition: in *y.Ber.* 4:1/7d, Rabbi Akiva is troubled by the fact that he, although qualified, cannot become *nasi*; in *b.Ber.* 27b–28a, Rabbi Akiva, who is dismissed as a possible candidate to take Rabban Gamaliel's place as *nasi*, later commands that the gates of the newly opened *bet midrash* be locked to keep out the servants of Rabban Gamaliel.)

Rabbi Akiva is portrayed in rabbinic sources as a bold investigator/innovator in a range of domains: halakhic, aggadic, and esoteric (note that even *m.^{c}Eduyyot*, at the end of Chapter Two, includes teachings of Rabbi Akiva that fall within the esoteric domain). Occasionally, his endeavors are seen as locating

him precariously on the margins. For example, in *b.Ḥag.* 15b, the tradition about Rabbi Akiva going up and coming down in peace, about which Song 1:4 is cited, is followed by the statement, "And even Rabbi Akiva the ministering angels sought to push away. . . ." The famous tradition about the death of Rabbi Akiva's students in *b.Yebam.* 62b "because they did not treat each other with respect" might be seen to underscore the dangers attendant upon Rabbi Akiva's enterprise, even though the destructive conflict is portrayed as one step removed from Rabbi Akiva himself. (See also the traditions about the variety of ways in which Rabbi Akiva's student, Rabbi Meir, is portrayed as excluded or almost excluded: *y.Mo*ᶜ*ed Qat.* 3:1/81c, *b.Hor.* 13b, ᶜ*b.Abod. Zar.* 18b, *b.Qidd.* 52b [about Rabbi Meir's students].) While Rabbi Akiva, then, is the paradigmatic rabbinic hero, a handful of sources suggest that his efforts are fraught with the dangers to individual and community discussed above: exclusion, conflict, and fragmentation. Perhaps, then, we might see the rabbinic tradition about Akavya as portraying the flip-side of the figure of Akiva, the examples listed above hinting at the nexus between these two figures. Akiva, read just slightly differently, yields Akavya, the figure who is read out of the community.

Art, Argument, and Ambiguity in the Talmud

Conflicting Conceptions of the Evil Impulse in *b.Sukkah* 51b–52a

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This article explores the literary significance of a logically awkward moment at the center of a *sugya* of dense argumentation (*b.Sukkah* 51b–52a). Literary analysis and comparison with earlier parallel sources (primarily from the Palestinian Talmud) reveal that the Babylonian Talmud constructs the logically awkward moment intentionally by amplifying an ambiguity implicit within its sources.

The ambiguity at the heart of the *sugya* concerns the Evil Impulse. Is he figured as a goad to sin or as a goad to righteousness? While the *Bavli*'s sources for this *sugya* depict the Evil Impulse primarily as a goad to sin, they contain subtle hints of the other possibility. When incorporating these sources into the fabric of its own argumentation, the *Bavli* preserves the formulation that depicts the Evil Impulse as a goad to sin, but additionally reconfigures the source to allow for the opposite perspective as well. Ambiguity about the nature of the Evil Impulse permeates the latter part of the *sugya*.

Drawing on contemporary literary theories that link ambiguity with literary value, this article suggests that negotiating ambiguity as found in this *sugya* constitutes one of the great aesthetic pleasures of reading dense argumentation in the *Bavli*.

Over the past 20 years, scholars of classical Jewish texts have borrowed heavily from contemporary literary theories about how texts function to communicate meaning. The borrowed theories have clarified ways in which biblical narrative, *midrash,* and *aggadah* are literary texts. Only recently, scholars of the dense argumentation in the Babylonian Talmud have begun to address related questions about the *Bavli* as literature. They have applied contemporary literary theories to the sections of dense argumentation in the hope of better understanding how meaning is generated there. This article will continue the work of showing that these theories can illuminate literary qualities within material that, by virtue of being neither poetic nor narratological, would seem to defy characterization as literature.[1]

1 On the difficulty of identifying the genre to which talmudic argumentation belongs, and

The literary approach to the *Bavli* can be contrasted with several other methods of reading to which the *Bavli* is often subjected. The historical approach, for example, tries to mine the text for information about the historical setting out of which the text emerged. The legal approach isolates legal positions from the flow of the argumentation and clarifies the norms they impose on practitioners of Jewish law. Finally, the source-critical approach looks for evidence of the text's history; it tries to discern the raw source materials the *Bavli* had at its disposal and show how they were reworked in their present context. The different approaches are by no means mutually exclusive, and are often best employed in a complementary fashion. A scholar whose primary questions are historical, for example, would be ill-advised to neglect source-critical considerations. The newly emerging literary approach, then, adds to the scholar's arsenal of tools.[2]

The specific concerns of the literary approach have to do with how meaning is constructed within the world of the text. Proponents of this approach share the fundamental conviction that the subtleties of textual expression are significant and they try to discern just what nuance of meaning the subtleties convey. Specifically, they attend to such features as 1. repeating words, phrases, images, motifs and themes; 2. overarching patterns that emerge from the repeating elements; and 3. tensions that interrupt the overarching patterns. This article will focus on the third area of concern, tensions that interrupt patterns within the text. These may occur where a conclusion does not flow smoothly from an earlier part of the argument or where the reigning logic is undermined by a sudden perspectival shift. I argue that the *Bavli* intentionally constructs such logically awkward moments because they invite the reader to engage the text more deeply. Momentarily disoriented, the reader must scrutinize the text for evidence that might resolve the ambiguity in one direction or another. Indeed I would suggest that negotiating the text's ambiguity and overcoming the confusion is one of the great aesthetic pleasures that reading dense argumentation in the *Bavli* offers.

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thus the difficulty of assessing it as literature, see David Kraemer, *Reading the Rabbis: The Talmud as Literature* (New York: Oxford Univ. Press, 1996) 5–9.

2 Several historians have already fruitfully put literary analysis in service of larger historical inquiries. Christine Hayes, for example, corrects a tendency among historical positivists who ignore the argumentational context within which certain facts appear. She argues that historical conclusions cannot be drawn without serious attention to the literary context of legal argumentation. See her *Between the Babylonian and Palestianian Talmuds: Accounting for Halakhic Difference in Selected Sugyot from Tractate Avodah Zarah* (New York: Oxford Univ. Press, 1997). Likewise, Jeffrey Rubenstein offers very fine readings of classic stories from the Talmud, with attention to both source-critical and literary issues. In the final analysis, his conclusions are historical. See Jeffrey Rubenstein, *Talmudic Stories: Narrative Art, Composition and Culture* (Baltimore: The Johns Hopkins Univ. Press, 1999).

The *Bavli* in the Context of Literary Theory

Among the most influential of the contemporary theories to which scholars of classical Jewish texts have turned is the notion that literary texts contain gaps that readers must fill in and ambiguity that they must negotiate. Meir Sternberg, for example, uses contemporary literary theories to illuminate biblical narrative and explains why gaps, ambiguity, and the resulting plurality of meaning have been elevated "to the status of a, if not the, literary value."[3] They "inevitably make for heightened perceptibility. [They] sharpen our awareness of the work's verbal art, foreground the modes of expression, and bring out the more subtle features of the represented events. Each detail assumes importance, deriving from the support or assistance it offers to the hypotheses [one constructs to fill in the gaps]. . . . In short, the ambiguity calls attention to the literary texture as such."[4] Sternberg reads gaps and ambiguity in biblical narrative as an index of – and to heighten our appreciation of – the Bible's literary texture. Influenced by Sternberg, Daniel Boyarin shows how attention to gaps, ambiguity, and heterogeneity in *midrash* can help us identify the ways it, too, is a literary text.[5] He observes the extent to which *midrash*ic interpretations are responses to gaps, ambiguity, and heterogeneity in the biblical text.[6] He further notes that *midrash* records competing solutions to questions suggested by the gaps in the biblical text and so is itself constituted by multivocality and ambiguity.[7] Boyarin's analysis offers the important insight (picked up by other scholars of *midrash*, as well) that ambiguity in the Bible begets ambiguity in *midrash*.[8] I believe that these same theories about how ambiguity functions within texts

3 Meir Sternberg, *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* (Bloomington: Indiana Univ. Press, 1985) 224.

4 Sternberg, *Poetics of Biblical Narrative*, 228.

5 Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Bloomington: Indiana Univ. Press, 1990). Other scholars also incorporate attention to ambiguity into their literary descriptions of *midrash*. See Steven D. Fraade, *From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: SUNY Press, 1991) esp.123–62 and David Stern, *Parables in Midrash: Narrative and Exegesis in Rabbinic Literature* (Cambridge, Mass.: Harvard Univ. Press, 1991) 15, 60–62, 74–82.

6 James Kugel also notes this in his "Two Introductions to Midrash," in Geoffrey H. Hartman and Sanford Budick, eds., *Midrash and Literature* (New Haven: Yale Univ. Press, 1986) 77–103; *In Potiphar's House: The Interpretive Life of Biblical Texts* (New York: Harper Collins, 1990); and *The Bible As It Was* (Cambridge, Mass.: Harvard Univ. Press, 1997). See also Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Oxford Univ. Press, 1985); "Inner Biblical Exegesis: Types and Strategies of Interpretation in Ancient Israel," in *Midrash and Literature*, 19–37.

7 See Boyarin, *Intertextuality and the Reading of Midrash*, esp.39–56. On multivocality in *midrash* see also Fraade, *From Commentary to Tradition*, 123–62.

8 According to Fishbane, the very difficulties in the biblical text that attract the attention of copy-

can help us identify literary qualities in the dense, argumentational portions of the *Bavli*. In the following pages, I would like to explore how ambiguity functions within a single *sugya* (*b.Sukkah* 51b–52a) and show how this ambiguity is a response to ambiguity in earlier texts. For the *Bavli*, too, ambiguity in antecedent texts might be seen as a means of text production. I offer this reading as a modest contribution to the burgeoning discussion of how to read the *Bavli* as literature.

Aryeh Cohen has already called attention to the importance of ambiguities, or "ungrammaticalities" as he calls them (borrowing the term from Michael Riffaterre), in a literary reading of the *Bavli*. For him, ambiguities are "important hermeneutical indices"[9] that direct the reader's attention away from the claims explicit in the linear flow of the argument and towards a literary reading instead.[10] Cohen identifies several specific ways in which ambiguity typically appears in the *Bavli*, among them instances where a conclusion does not follow from the preceding argument.[11] David Kraemer likewise attaches literary significance to logically awkward or difficult moments in an argumentational sequence.[12] An important tenet of both Cohen and Kraemer's work is that even when material loses its *legal* significance by virtue of logical inconsistency, it maintains its *literary* significance by virtue of inclusion within the *sugya*.[13] Building on Cohen and Kraemer's attention to logical inconsistency as a part of the literary texture of the *Bavli*, I will argue that the *Bavli* constructs such moments as part of its literary craft. I will demonstrate that the logically awkward moment in the *sugya* under analysis is the *intended* outcome of the *Bavli*'s composition. Comparison with the earlier parallel sources, especially the *Yerushalmi*, reveals the subtle ways in which the *Bavli* has reworked them.[14] I argue that the *Bavli* reworks its sources in such a way as to highlight ambiguities that, in its sources, are merely implicit.

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ists who emend the text as they transmit it, also attract the attention of the post-biblical exegetes after the canon is closed. See, for example, Fishbane, "Inner Biblical Exegesis," 36: "The most characteristic feature of the Jewish imagination, the interpretation and rewriting of sacred texts, thus has its origins in the occasional, unsystematized instances of exegesis embedded in the Hebrew Bible." Stern also notes that ambiguities in the biblical text produce commensurate ambiguities in the narrative of the *mashal*. See his *Parables*, 77–82.

9 Aryeh Cohen, *Rereading Talmud: Gender, Law and the Poetics of Sugyot*, BJS 318 (Atlanta: Scholars Press, 1998) 31.

10 See Cohen, *Rereading Talmud*, 31, 141, and 193.

11 For example, see Cohen, *Rereading Talmud*, 200. Other characteristic types of ambiguities in the *Bavli* include opaque or unclear terms. For discussion see Cohen, *Rereading Talmud*, 165–68.

12 See Kraemer, *Reading the Rabbis*, 147–49.

13 See Cohen, *Rereading Talmud*, 167: "Even though it is not accepted as *legal* reasoning, it still has rhetorical power." See Kraemer, *Reading the Rabbis*, 145: "In my reading all these halakhically irrelevant details have a point."

14 In presuming the availability of the *Yerushalmi* as a source for the *Bavli* I rely very heavily on the work of Alyssa Gray. In her dissertation on the relationship between the two Talmuds,

In his discussion, Sternberg suggests that ambiguity is experienced when the reader alternates between two competing ways of filling in textual gaps. The ambiguity yields two alternative explanations of the text, which offers readers a certain aesthetic pleasure. As Sternberg writes, "the interplay between the hypothesis endorsed and the one rejected . . . constitutes one of the basic features and appeals of literary art."[15] In the *sugya* under analysis in the *Bavli*, ambiguity likewise arises when two conflicting paradigms can be invoked to explain the same textual phenomenon. The death of the Evil Impulse emerges as a central topic of discussion in *b.Sukkah* 51a–52b. The explicit concern of the *sugya* is to determine the cause of the crying that accompanies his death: do the tears express sorrowful mourning or are they occasioned by some other profound emotion? Within the discussion that follows it is possible to discern two conflicting interpretations of the figure of the Evil Impulse. On one hand, some textual evidence suggests a negative appraisal of the Evil Impulse because he leads human beings to sin. On the other hand, other textual evidence suggests a *positive* appraisal of the Evil Impulse, as the very force that leads human beings to *righteous*, as well as sinful, deeds. The initial steps in the argumentational sequence take for granted the negative view of the Evil Impulse as a goad to sin. Ambiguity is introduced, however, at a central point in the argument, and from that point on the reigning assumptions about the Evil Impulse are thrown into doubt. The reader feels disoriented when sensing the failure of the first paradigm to account for new textual data, but does not yet have enough information to comprehend the second paradigm. This disorientation creates a dramatic tension,[16] provoking the reader's curiosity

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she concludes that *y.ᶜAvod. Zar.* did influence the formation of *b.ᶜAbod. Zar.* She bases her conclusions on the observation of structural and topical similarities. She further notes that *b.ᶜAbod. Zar.* often consciously reworks the sources it adopts from *y.ᶜAvod. Zar.* Additionally, she observes that on a number of occasions the *Bavli* begins its discussion precisely at the point at which the *Yerushalmi* has left off, attempting to answer questions left unresolved in the *Yerushalmi*. Her results are suggestive for other tractates of the Talmud as well. Using Gray's criteria of structural and topical similarities, I conclude that the *Bavli*'s interpretation of *m.Sukkah.* 5:2 did draw on the *Yerushalmi*'s discussion of the same *mishnah*. Further following Gray, I consider the differences between the *Yerushalmi*'s and the *Bavli*'s discussions of the same *mishnah* to result from the *Bavli*'s intentional reworking of the inherited materials. Finally, building on the last noted insight of Gray, I observe that in the *sugya* under analysis, the *Bavli* appears to pick up its discussion precisely where the *Yerushalmi* has left its readers with unresolved questions. See Alyssa Gray, "A Talmud in Exile: Palestinian Talmud Avodah Zarah and its Influence on the Formation of the Babylonian Talmud Avodah Zarah" (Ph.D. diss.; New York: Jewish Theological Seminary of America, 2001).

15 Sternberg, *Poetics of Biblical Narrative*, 224.

16 This dovetails nicely with Louis Jacobs' observation that talmudic argumentational sequences are arranged in such a way as to achieve maximum dramatic effect. See Louis Jacobs, *The Talmudic Argument: A Study In Talmudic Reasoning and Methodology* (Cambridge: Cambridge Univ. Press, 1984) 203–4, 211; *Structure and Form in the Babylonian Talmud* (Cambridge: Cam-

and inviting him to engage the text more deeply. I argue that the literary and rhetorical art of the *Bavli* consists in crafting this moment of disorientation, for it is at that moment that the reader's sensibilities are most heightened. Furthermore, I wish to suggest that experiencing the moment of disorientation and wrestling with the resultant ambiguity constitutes one of the great aesthetic pleasures of reading sections of dense argumentation in the *Bavli*. Part of my task, then, is to reconstruct how the *Bavli* achieves this effect.

Like other rabbinic literatures, the *Bavli* is an anthological text, pulling together older sources in creative new configurations.[17] As others have already observed, the *Bavli* achieves its literary effects by its arrangement of its constituent sources.[18] New juxtapositions create new contexts, new contexts in turn offer new meanings to the older sources. This method of creating new meanings might be taken as an index of the traditional character of rabbinic literature, which sees its essential purpose in preserving and transmitting older sources. In pursuing how the *Bavli* crafts the moment of disorientation, we will find that here too the *Bavli* achieves its literary effects by manipulating its constituent sources – with one small difference. Here, the creative moment arises when the *Bavli rearranges the composite parts of the source* (as opposed to the more commonly observed phenomena noted above of placing sources intact in new contexts).[19] Rearranging the composite parts of the source accomplishes two things. On one hand, it produces new meanings on the

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bridge Univ. Press, 1991) 101. Jonah Fraenkel also suggests drama as the generic classification most appropriate to rabbinic sage stories. See Jonah Fraenkel, *Darkhei ha'aggadah vehamidrash* (Givatayim: Yad Latalmud, 1991) 238–43. See also Jeffrey Rubenstein, who follows Fraenkel in this classification, *Talmudic Stories*, 9–10.

17 Fraade discusses this issue with respect to *midrash*. See his "*Sifre* Deut. 26 (ad. Deut. 3:23): How Conscious the Composition?" *HUCA* 54 (1983) 245–301, and *From Tradition to Commentary*, esp. 26 and 123–62.

18 See Rubenstein, *Talmudic Stories*, esp. 14: "Redactors were as much authors and storytellers as compilers, so the interpretation of a story should not be considered independently of the literary context they chose. The redactional context shaped the story in relation to that context." See also Louis Jacobs, *The Talmudic Argument*, 201, 204, 211, and esp. 20: "In reality, the compilers were creative artists, reshaping all the earlier material to produce a literary work . . . [for] the sugya is presented in such a way that argument leads on to further argument, in neat and logical sequence." Kraemer, *Reading the Rabbis*, 15, even goes so far as to call the redactors 'authors,' and brings the following questions to bear in his analysis of the *Bavli*: "How, then, does the author's choice and arrangement of materials affect our understanding? How does his shaping of the materials create a coherent thesis?"

19 As exemplified in the work of Jacobs, *The Talmudic Argument*; Fraade, *From Tradition to Commentary*; and Rubenstein, *Talmudic Stories*. It should be noted that words are often changed within the source to reflect the new meaning provided by the new context. Judith Hauptman also notes the prevalence of this phenomenon in the *Bavli*'s citation of *baraitot*. See Judith Hauptman, "Mishnah As a Response to 'Tosefta,'" in Shaye J. D. Cohen, ed., *The Synoptic Problem in Rabbinic Literature* (Providence: Brown Judaic Studies, 2000) 23, n.23.

same order that placing sources in new contexts does. When the composite parts of the source are juxtaposed to each other in new ways, new meaning results. On the other hand, the fact that the *Bavli* produces new meanings in a way that leaves the original wording *intact* means that the original meaning continues to resonate within the source, even if merely in a residual manner. By preserving an earlier understanding *and* constructing a new one, the *Bavli* makes available to the reader simultaneously two different ways of understanding the reconfigured source. The disorientation felt by the reader upon encountering the reconfigured source with its two different possible frameworks of interpretation is characteristic of the *Bavli* and part of its distinctive aesthetic appeal. This moment of disorientation initiates a deeper level of reading, for now the reader must negotiate ambiguity. Sternberg's discussion of ambiguity gives us a vocabulary to articulate how this moment of disorientation is a part of the *Bavli*'s literary and rhetorical craft. Let us now turn to the text and make these general observations concrete.

Ambiguity in Antecedent Texts

Our *sugya* is set within the context of the discussion of the joyous Water-Drawing Festival that took place every year during Sukkot. According to descriptions in the Mishnah, the Water-Drawing Festival involved much spectacle, with giant candelabras spreading light across Jerusalem; men of great renown dancing with burning torches; and Levites playing harps, lyres, cymbals, trumpets, and other instruments. Indeed, the Mishnah characterizes the joyous quality of the festivities in most emphatic terms: "He who has not seen the joyous Water-Drawing Festival has not [truly] seen joy in his life" (*m.Sukkah* 5:1).[20] The developments that lead to our *sugya* begin with a cryptic *mishnah* describing the initiation of the joyous Water-Drawing Festival.

> On the eve of the first day of the festival [of Sukkot], they would go down (*hayu yordim*)[21] into the Women's Court and enact (*umatqinin*) there a great enactment (*tiqqun gadol*). (*m.Sukkah* 5:2)

20 For an analysis of the rituals of the festivities against the backdrop of their mythic origins, see Raphael Patai, *Man and Temple in Ancient Jewish Myth and Ritual* (London and New York: T. Nel-son, 1947) 24–70. For an analysis of the festivities that takes them to be an index of women's participation in the activities of the Temple, see Susan Grossman,"Women and the Jerusalem Temple," in Susan Grossman and Rivka Haut, eds., *Daughters of the King* (Philadelphia: Jewish Publication Society, 1992) 22–29. For an analysis that stresses their function as a rainmaking ritual against the backdrop of the holiday of Sukkot, see Jeffrey L. Rubenstein, *The History of Sukkot in the Second Temple and Rabbinic Periods* (Atlanta: Scholars Press, 1995) 131–52.

21 Text according to MSS Cambridge and Parma, not printed edition. The fundamental differ-

This *mishnah* generates a number of questions. What is the "great enactment" of which the text speaks? Who is the anonymous "they" responsible for the enactment? In short, the *mishnah* contains an obscure usage that is difficult to penetrate.

One difficulty with understanding the nature of the "great enactment" derives from an ambiguity concerning the temporal framework within which the enactment takes place. Textual evidence suggests two equally plausible temporal frameworks for the enactment. On one hand, the verb used – "they enacted"(*umatqinin*) – suggests that the enactment was a one-time event. This verb is typically used to describe problematic situations that were resolved by a legal remedy.[22] On the other hand, the fact that this *mishnah* employs

ence between the MSS and the printed edition concerns the tense of the two verbs. The manuscripts place the events in the habitual past (*hayu yordim . . . umatqinin*), suggesting that these actions took place every year. By way of contrast, the printed edition uses the simple past for the first verb (*yardu*), leaving the meaning of the second verb in participle form (*umatqinin*) unclear without its auxiliary verb. It seems clear that the MSS preserve the original version. MS Kaufman, like MSS Cambridge and Parma, places the events in the habitual past (*hayu yordim . . . umatqinin*). It, however, contains an additional, and intriguing, variant: *umatqinin mishum* (instead of *sham* in the other MSS) *tiqqun gadol*, "they enact on account of a great enactment." The plethora of variants in the description of the enactment attests to a lack of clarity surrounding its interpretation.

22 The range of meanings suggested by this term includes "to ordain, establish a custom, to innovate," all one-time events. See Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yeru-shalmi, and the Midrashic Literature* (repr.: New York: Jastrow Press, 1967) 1962.

23 Though a participle with an auxiliary verb can theoretically indicate the simple past, the majority of interpreters understand the current example to be an instance of the habitual past. See discussion of the participle as a grammatical form that suggests a repetitive action in Hauptman, "Mishnah As a Response to 'Tosefta,'" 18 and 20, n.12. Other commentators simply assume the habitual connotation to the verb. Most modern commentators draw on Rashi s.v. *vehikifuha gezuztra*, *b.Sukkah* 51b, who says that certain elements of a structural renovation to the Temple walls remained in place whereas other elements of the renovation were constructed anew every year. The fact that he emphasizes that some elements were constructed anew every year implies an understanding of the verb as repeated or habitual in nature. See also Saul Lieberman, *Tosefta Ki-fshuta: Moʿed* (3 vols.; New York: Jewish Theological Seminary of America, 1962) 2:886, who explains that the *tiqqun* was performed every year, even if structural elements remained in place from year to year. The confusion concerning the verb tenses also manifests itself in the manuscript evidence. The earliest attestations of this *mishnah* (MSS Kaufman, Parma and Cambridge, Leiden and Munich) all place both verbs in this sentence in the same tense, using one auxiliary verb complemented by two participles: "they *used to go down* . . . and *enact* . . . a great enactment" (*hayu yordim . . . umatqinin . . . tiqqun gadol*). Given the universal attestation of this reading in the earliest manuscripts, it is odd to find a variant in the printed edition of the Talmud. There the *mishnah* places the first verb in the simple past, and in so doing removes the auxiliary verb that accompanied the first participle. The *second* verb, however, is maintained in participle form, which appears particularly odd, since it is no longer complemented by an auxiliary verb. It is difficult to tell what prompted this emendation of the text, since it creates a problem rather than resolving one. If it weren't for the universal attestation of the simpler reading in all of the early manu-

the habitual past verb tense – "they *used* to go down . . . and enact" (*hayu yordim . . . umatqinin*) – suggests that the enactment was a regular part of the ritual, performed every year at the festival.[23] The reader, then, has before him two possible temporal frameworks within which to understand the enactment: either it was a one-time event or it was enacted each year on an on-going basis.[24]

A second difficulty arises from the unusual way in which the verbal root *tqn*, meaning "to enact, fix or amend," is manipulated in the *mishnah*. Whereas the verb appears in a causative inflection (*matqinin*), the noun that describes the resultant action appears in an intensive inflection (*tiqqun*). One might have expected to find the noun that describes the resultant action to appear in the same inflection as the verb, that is, in the causative inflection. The fact that the common word for enactment (*taqqanah*) derives from the causative inflection makes the usage even more curious. The more straightforward word choice was presumably available to the author(s) of this *mishnah*. The noun used in this *mishnah* (*tiqqun*) is most literally translated as "a fixing" or "a repair." When used in the expression *tiqqun ᶜolam*, the "fixing" refers to a restoration of *social* order. One might speculate that the *mishnah* uses the less common term for enactment to allude to the fact that this enactment restored social order.[25]

Furthermore, the reader familiar with other tannaitic descriptions of "enactments" (*taqqanot*) will recognize that this narration does not conform to the usual pattern. Typically, tannaitic texts employ a formula consisting of two clauses to describe an enactment.[26] By way of contrast, the expression used in our *mishnah*, "they used to enact a great enactment" (*umatqinin . . . tiqqun gadol*) appears only once: here. The typical description of an enactment begins with a first clause, which describes the situation before the enactment took place, often citing a deficiency that the enactment will come to rectify.

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scripts, the principle of *lectio difficilior* might dictate that we accept the reading in the printed edition. At any rate, the fact that only the first verb was changed to the simple past provides further evidence for the fact that the second verb (*umatqinin*) has been almost universally understood to be in the habitual, rather than the simple, past.

24 Rashi, in fact, notes this ambiguity in the *mishnah* and resolves it by incorporating both possible interpretations into his comments. See discussion of Rashi below in n.31.

25 Judith Hauptman makes such a suggestion. See her "Mishnah As a Response to 'Tosefta,'" 20–21. She cites the use of the verb, "to enact" (*hitqin*), in close proximity with the expression for restoring social order (*tiqqun ᶜolam*) in *m.Giṭ* 4 and 5 as evidence for the linkage between the concept of enactment and the restoration of social order.

26 The Bar Ilan Responsa project shows 22 instances of what I describe below as the typical pattern (14 in the Mishnah and 8 in the Tosefta). By way of contrast, our *mishnah* appears to be the only instance in which the verb *matqin* is used in the present tense to describe an enactment. In the very few instances in which the verb *matqin* is used in the present tense in tannaitic literature (2 additional times in the Mishnah and 8 times in the Tosefta), the verb expresses an alterative meaning of "to prepare" or "to set it up as. . . ."

This first clause often begins with the word "initially" (*barishonah*): initially, things were one way. The second clause usually begins with a verbal form of the word "enactment," "they enacted" (*hitqinu*) or "he enacted" (*hitqin*), and presents the enactment as a response to some need or changed circumstance described in the first clause.[27] While the Mishnah does use the verb – *umatqinin* – usually associated with enactments, the failure of the Mishnah to use the typical formulaic pattern further obscures the nature of the enactment alluded to here. It is also noteworthy that the *mishnah* uses the habitual past to narrate the action of enactment. The typical narration of enactment places the actions in the simple past.[28]

Though the Mishnah's description of the enactment is riddled by obscurity and ambiguity, two tannaitic parallels shed light on the nature of the "great enactment." The first appears in the Tosefta.

> Initially (*barishonah*) when they would watch the joyous Water-Drawing Festival, men would watch from the middle and women would watch from the periphery.
>
> Because the court saw that this would lead to levity, they made three galleries, one for each of the three walls, and from there the women would watch the joyous Water-Drawing Festival,
>
> [Thereafter] when they would watch the joyous Water-Drawing Festival, they [men and women] would not mingle. (*t.Sukkah* 4:1)

This source supplies much important information. Though it does not use the term enactment (*tqn*) in any of its forms, it does contain elements of the standard formula for narrating an enactment.[29] A first clause begins with the word "initially" (*barishonah*) and describes what the court took to be a problematic situation. Initially, men and women would both watch the festivities from the ground level, with men standing in the center of the space and women around the edges. Apparently this informal separation of the sexes was not enough to prevent frivolity (and one might suppose, sexual liaisons), so more drastic

27 For examples of the complete classic formula (first clause begins *barishonah*, second clause begins *hitqinu*), see *m.Šeb.* 4:1, *m.Maʿaś.* 5:8, *m.Bik.* 3:7, *m.Šeqal.* 1:2, *m.Roš Haš.* 4:3, 4:4, *m.Giṭ.* 4:2, and others. For examples of partial use of the formula, see *m.Roš Haš.* 4:1, *m.Sukkah.* 4:4, *m.Giṭ.* 4:3, and others.

28 The database of the Bar Ilan Responsa Project indicates 49 instances in the Mishnah and Tosefta where the verb appears in the past tense with the meaning of "to enact." By way of contrast, the present case is the only instance in which the verb appears in the present tense with the meaning of "to enact."

29 For other *mishnayot* that contain only some elements of the complete enactment formula, see n. 27.

measures were required. The second clause explains that the court erected galleries so that men and women would be more definitively separated. This source answers some of our initial questions. It tells us what the enactment was, who was responsible for it, and suggests that it was a one-time event. It also explains that the effect of the enactment was to restore social order by preventing inappropriate sexual frivolity.[30] It appears, then, that the term "great enactment" in the Mishnah refers to galleries that were erected in the Women's Court in order to separate men from women and prevent frivolity. The Tosefta's use of the standard formula for narrating an enactment suggests that the changes were made on a one-time basis, but its allusion to the restoration of social order suggests an ongoing temporal framework for the enactment.

A tradition in *m.Middot*, which extensively describes the architecture of the Temple, reviews much of the same information that the Tosefta provides. Like the source from the Tosefta, this source describes a set of events which can be understood in terms of the enactment mentioned in *m.Sukkah* 5:2. Also like the Toseftan source, this tradition in *Middot* does not use the term "enactment" in any of its forms, and though it does use the term "initially" (*barishonah*), associated with the first clause of the enactment formula, the term does not appear in its usual spot at the beginning of the first clause.

> [The Women's Court] was smooth initially (*barishonah*),
>
> Then they surrounded it with a balcony, so that women would watch from above and men from below, so that they would not mingle. (*m.Mid.* 5:2)

This tradition makes no mention of the Water-Drawing Festival as the context for the events it describes, leaving the connection to our passage somewhat tenuous. Nonethless, the source does seem to be describing the same architectural renovation referred to by the Toseftan source. Like the source from the Tosefta, this source suggests that the galleries were erected to prevent men and women from any sexual liaisons that might result if they mingled. This tradition's focus on the architectural state of the Temple would further seem to confirm our hypothesis from the Tosefta that the changes were made on a one-time basis, as a kind of architectural renovation.[31] Nonetheless, it also

30 As noted above, Hauptman understands the element of restoring social order to be a large component of the enactment or fixing described here. See her "Mishnah As a Response to 'Tosefta,'" 20–21.

31 I must stress, however, that even though the two intertexts appear to take a stand on whether the enactment was a one-time event or a regular part of the ritual as it was celebrated each year, the mishnaic text preserves the possibility of either reading and does not definitively resolve the ambiguity. Rashi, in fact, does not take the tannaitic parallels' representation of the enactment as a one-time event to be definitive. He takes into account both the Mishnah's

suggests that the motivation for changes was to restore social order, which would have been an ongoing effect of the enactment.

While the Mishnah's parallel sources supply useful information concerning the great enactment, they also leave certain ambiguities in place. On one hand, the parallel sources lead us to believe that the changes brought about by the enactment were architectural in nature, and thus were a one-time event. On the other hand, the parallel sources make equally clear that the effect of the architectural renovations was to restore social order and this result would have taken effect each and every year. Thus, it is equally possible to see the enactment as a restoration of social order that was effected on a regular basis.

Ambiguity Begets Ambiguity

To the extent that the parallel sources do supply valuable information about the enactment, they also provoke new questions. If the enactment was a one-time architectural renovation to the Women's Court, where did the authority to make these changes come from?[32] It is here that tannaitic tradition leaves off and amoraic tradition picks up.

Amoraim apparently studied these three tannaitic sources – *m.Sukkah* 5:2, *t.Sukkah* 4:1, and *m.Mid.* 5:2 – in conjunction with each other.[33] Both Talmuds begin their discussion of *m.Sukkah* 5:2 with the same question that occupied us concerning the term "great enactment." The *Yerushalmi* asks, "What was the great enactment that they made there?" (*y.Sukkah* 5:2, 55b), and likewise the *Bavli* inquires, "What was the great enactment?" (*b.Sukkah* 51b). Both Talmuds allude to the tannaitic intertexts that we have already discussed to resolve the question.[34] After resolving that difficulty, both Talmuds inquire into the authoritative basis for making such changes to the Temple structure. The *Yerushalmi*

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verb tense in the habitual past, which suggests that the event took place on a yearly basis and the tannaitic parallels, which point towards the enactment as a one-time event. Mediating between the two positions he suggests that pegs were inserted permanently into the walls (a one-time event), but that the balconies were erected every year anew as a part of the ritual. See Rashi s.v. *vehikifuha gezuztra*, *b.Sukkah* 51b. Hauptman offers an interesting explanation for the Mishnah's ambiguity based on the assumption that it is a later text than the Toseftan parallel. See Hauptman, "Mishnah As a Response to 'Tosefta,'" 18–24. For a survey of the modern scholarly debate about the Mishnah's ambiguity, see Grossman, "Women and the Jerusalem Temple," 34, n.62 and Hauptman, "Mishnah As a Response to 'Tosefta,'" 20, n.12.

32 The Toseftan source suggests that the court was responsible for the changes, but even so one may wonder from whence came their authority to change something so fundamentally prescribed by God as the Temple structure.

33 Hauptman, "Mishnah As a Response to 'Tosefta,'" 22–23 makes the same point.

34 While the *Bavli* cites both *t.Sukkah* 4:1 and *m.Mid.* 5:2, the *Yerushalmi* cites only the source from *m.Middot*. As Hauptman notes, however, the *Yerushalmi* does explain in its own voice that the "great enactment" was intended to separate men from women, thereby reinforcing

asks, "From whom did they learn [to do this]?" (*y.Sukkah* 5:2, 55b). The *Bavli* makes the problem even more explicit, wondering "How could they do this, for is it not written [when God gives instructions to Solomon concerning the building of the Temple], *Everything has been given in writing from the hand of God, he has made me wise* (1 Chr 28:19)?" (*b.Sukkah* 51b). This query into the authoritative basis for the changes opens the door to the next part of the *sugya*.

Though both of the Talmuds inquire into the authoritative basis for the changes, the later *Bavli* appears to respond to a difficulty raised by the *Yerushalmi*'s earlier answer. As noted above, the structure of the two talmudic discussions is strikingly similar. The two Talmuds ask the same questions about the Mishnah and use the same sources (whether tannaitic or biblical) to answer them. The similarities in content and structural arrangement of the common context suggest that the *Bavli* had access to the *Yerushalmi*'s discussion of *m.Sukkah* 5:2.[35] Furthermore, and perhaps of even greater interest, the *Yerushalmi*'s discussion leaves its readers with certain questions. The *Bavli*'s manipulation of the materials it inherits from the *Yerushalmi* and the ensuing development of new ideas seem designed to address the very questions provoked by

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the point of the Toseftan *baraita*, even if not citing it. See Hauptman, "Mishnah As a Response to 'Tosefta,'" 24. Gray points out that the *Bavli* routinely supplements a *sugya* from the *Yerushalmi* with an additional tannaitic source as part of its conscious reworking of the *sugya*. See Gray, "A Talmud in Exile," 350.

35 In her comparison of *y.ʿAbod. Zar.* with *b.ʿAbod. Zar.* Gray points to a number of phenomena that indicate literary dependence of the later Talmud on the earlier one. The present example conforms to a paradigm treated by Gray in which the same tannaitic sources are cited in both Talmuds. Gray argues that when the two Talmuds use the tannaitic sources to the same ends and share a larger discursive framework, *and* when evidence of the *Bavli*'s editorial reworking can be discerned in *both* the tannaitic sources and the larger discursive framework, then it is reasonable to conclude that the parallel in the earlier Talmud influenced the formation of the *sugya* in the later Talmud. Gray argues that, in the cases that conform to this paradigm, the *Bavli* most likely adopted the entire unit (tannaitic sources and larger discursive framework) intact and edited according to its own sensibilities. See Gray, "A Talmud in Exile," 40; see also 296, where she stresses that the difference between two *sugyot* that share structural and topical similarities can often be accounted for by positing editorial reworking on the part of the *Bavli*. The following editorial reworkings on the part of the *Bavli* are noted in the course of this article: 1. the description of the enactment in *m.Mid.* 5:2 and *t.Sukkah* 4:1 are rewritten to include the word "they enacted" (*hitqinu*), thereby making the link between them and the enactment described in *m.Sukkah* 5:2 more explicit; 2. *t.Sukkah* 4:1 is cited in addition to *m.Mid.* 5:2 (only the source from *m.Middot* is cited in the *Yerushalmi*); 3. the question concerning the authoritative basis for the changes to the Temple architecture is intensified by citing a verse from Scripture which states that the Temple was initially built according to divine specifications; and 4. the *qal v'ḥomer* arguments from the *Yerushalmi* are re-ordered in relationship to the two opinions on which they are based. The *Bavli*, then, consciously reworks both the tannaitic sources and the larger discursive framework, suggesting (according to Gray's criteria) that the editors of the *sugya* in the *Bavli* did use the *Yerushalmi*'s *sugya* as a source.

the *sugya* in the *Yerushalmi*.[36] The present study, then, provides corroborating evidence to recent studies that suggest that the *Bavli* had access to the *Yerushalmi* as a literary source and consciously reworked it according to its own sensibilities.[37] It further suggests that, at least in some instances, the intellectual concerns of the *Bavli* were shaped by the questions left unanswered and the ambiguities left unresolved in the *Yerushalmi*. In order to understand how the *Bavli* responds to the difficulties raised by the *Yerushalmi*'s answer to this question, we must first analyze the *Yerushalmi* treatment of this *mishnah* as a source in its own right. Only then will we be prepared to understand how the *Bavli* is responding to and making use of the *Yerushalmi* as a literary source.

As noted above, the *Yerushalmi* begins its discussion of *m.Sukkah* 5:2 by clarifying that the 'great enactment' of the *mishnah* refers to balconies that were erected to separate men and women. After resolving its initial question, the *Yerushalmi* next inquires into the authoritative basis for the innovation.

A. From whom did they learn [to do this]?

B. From the words of the Torah:

C. *The whole land shall mourn* (v'safda), *each family by itself: [the family of the House of David by themselves, and their womenfolk by themselves; the family of the House of Nathan by themselves, and their womenfolk by themselves]* (Zechariah 12:12).

D. Two *amoraim* [offered interpretations of this verse]: One said this refers to the mourning of (*hespedo shel*) the Messiah and the other said this refers to the mourning of (*hespedo shel*) the Evil Impulse.

E.1. He who says this refers to the mourning of (*hespedo shel*) the Messiah [reasons as follows]: if at a time when they are mourning (*avelin*) men keep to themselves and women keep to themselves, then at a time when they are rejoicing, is it not all the more necessary [to separate men and women]?

E.2. He who says this refers to the mourning of (*hespedo shel*) the Evil Impulse [reasons as follows]: if at a time when the Evil Impulse does not exist

36 Gray also notes that *b.ᶜAbod. Zar.* often addresses issues that are underdeveloped or questions left unanswered in *y.ᶜAbod. Zar.* For example, the *Bavli* may highlight a point left merely implicit in the *Yerushalmi*. See Gray, "A Talmud in Exile," 61–62, 84–85, 254–68. Her observations on *y.ᶜAbod. Zar.* and *b.ᶜAbod. Zar.* have relevance to the present study in which the *Bavli* appears to address a question left unresolved in the *Yerushalmi*.

37 See Gray, "A Talmud in Exile"; Martin Jaffee, "The Babylonian Appropriation of the Talmud Yerushalmi: Redactional Studies in the Horayot Tractates," in Alan J. Avery-Peck, ed., *New Perspectives on Ancient Judaism: Issues in Talmudic Redaction and Interpretation* (vol.4; Lanham,

> men keep to themselves and women keep to themselves, then at a time when the Evil Impulse does exist, is it not all the more necessary [to separate men and women]?

The *Yerushalmi* cites a verse from Zechariah that speaks of separation between men and women as the basis for separating men and women during the Water-Drawing Festival. It should be noted that the verse does not really address the legitimacy of architectural changes, but rather speaks to the legitimacy of separating men and women. In this sense, it may be that even while the *Yerushalmi* believes that the "great enactment" was one that required authoritative legitimization (as an architectural renovation would), it also locates the "great enactment" of the Mishnah in the realm of social organization rather than in the realm of architectural renovation. Thus, the Mishnah's ambiguity as to whether the enactment was performed on a yearly basis as a regular part of the ritual or whether it was performed on a one-time basis continues to reverberate in the *Yerushalmi*.[38]

After citing the verse from Zechariah, the *Yerushalmi* develops two alternate *qal v'ḥomer* (*a fortiori*) arguments to establish the legal relevance of the biblical verse to the case at hand. As will be recalled, the verse states that men and women were separated at a time when the whole land mourned. Apparently, two different opinions exist as to whose death is alluded to by this verse, and each one becomes the basis for an independent *qal v'ḥomer* argument. Some hold that the verse refers to the death of the Messiah and others hold that it refers to the death of the Evil Impulse (see par. D). Those who hold the first opinion, that the verse alludes to the death of the Messiah, produce the following *qal v'ḥomer* argument: if there is separation between men and women during a time of great sorrow, when we surely do not expect lewd behavior (as in the verse), then certainly we need separation between men and women at times of joy, when such behavior could be expected (as during the Water-Drawing Festival; see par. E.1).

Alternatively, those who hold the second opinion, that the verse alludes to the death of the Evil Impulse, produce a different *qal v'ḥomer* argument: if there is separation between men and women when the Evil Impulse no longer exists and presumably there is little goad to sin (as in the verse), then certainly we

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Md.: Univ. Press of America, 1989) 3-27; Shamma Friedman, "*Lahaggadah hahistorit batalmud habavli*," in Shamma Friedman, ed., *Sefer hazikaron leRabbi Shaul Lieberman* (New York and Jerusalem: Jewish Theological Seminary, 1993) 119–64, esp. 137; and Rubenstein, *Talmudic Stories*.

38 Indeed the ambiguity is never really resolved and is picked up by the medieval commentator Rashi, as discussed in note 31 above. Hauptman's explanation that the Mishnah knowingly included this ambiguity in its composition would suggest that it can never be overcome. See "Mishnah As a Response to 'Tosefta,'" 24.

need separation between men and women when the Evil Impulse still exists and presumably there is a greater goad to sin (as during the Water-Drawing Festival; see par. E.2). Whereas the first *qal v'ḥomer* argument focuses on sorrowful mourning (*avelin*) as opposed to joy as the chief point of contrast between the verse and the Water-Drawing Festival, the second *qal v'ḥomer* argument focuses on the presence or absence of the Evil Impulse as the chief point of contrast.

Having explicated the *Yerushalmi*'s interpretation of the Zechariah verse, I want to make several observations. First, the two *qal v'ḥomer* arguments (par. E.1 and E.2) are directly dependent on the two opinions stated in par. D. It is for this reason that the opinions are stated *before* the *qal v'ḥomer* arguments. While this observation may seem self-evident, we will see that when the *Bavli* incorporates this material into its *sugya*, it reverses the order and thereby obscures the dependence of the two *qal v'ḥomer* arguments on the two opinions. As attentive source-critical readers, however, we must remain cognizant of the fact that in the rhetoric of the *Yerushalmi*, where the *qal v'ḥomer* arguments are first articulated, they *derive from* the two opinions as to who died. The two *qal v'ḥomer* arguments do not exist independently of the two opinions on which they are based.

A second observation: this structure of two parallel *qal v'ḥomer* arguments suggests that each of the two opinions has an exclusive claim to its respective *qal v'ḥomer* argument. That is, the first *qal v'ḥomer* argument only works for the first opinion as to who died. Likewise, the second *qal v'ḥomer* only works for the second opinion as to who died. So for example, if you hold the *second* opinion, that the verse refers to the death of the Evil Impulse, then the *first qal v'ḥomer* argument doesn't make sense. The first *qal v'ḥomer* argument argues on the basis of the fact that the death being spoken of occasioned sorrowful mourning. This first *qal v'ḥomer* argument, however, pertains to the Messiah, whom the *first* opinion takes to be the implied subject of the verse. It would seem, then, that the very structure of two parallel *qal v'ḥomer* arguments suggests that the death of the Evil Impulse (in contrast to the death of the Messiah) does not elicit sorrowful mourning.

This conclusion that the structure of two parallel *qal v'ḥomer* arguments suggests that the death of the Evil Impulse is not mourned with sorrow raises a question. Doesn't the prooftext from Zechariah state that the death in the verse, no matter whether it is the death of the Messiah or the death of the Evil Impulse, *does* arouse mourning? This question leads to another very subtle observation, namely that the *Yerushalmi* uses two different terms in the course of the *sugya* for mourning: *hesped*, deriving from the three-letter root *sfd*, whose range of meanings covers 'to mourn,' 'to lament,' or 'to eulogize,' and *avelin*, from the three letter root *avl*, whose range of meanings include 'to mourn' and 'to

observe mourning practices.'[39] I would like to argue that in this passage, the first term (*hesped*) is being used in the sense of "to eulogize" or even "to formally mark the occasion of the death," so that no emotional quality of sorrow is required.[40] The halakhic requirement to mark the occasion of death with a eulogy persists irrespective of one's personal relationship to the deceased. On the other hand, I argue that the second term (*avelin*) *is* being used to convey the notion of sorrow in mourning, just as the individual who has lost a next of kin concretizes his or her loss and sorrow in particular mourning practices. The *Yerushalmi* uses the first term (*hesped*) when it outlines the two opinions as to whose death the verse refers. Summarizing the two opinions, the *Yerushalmi* states, "One says this refers to the mourning of (*hespedo shel*) the Messiah and the other says this refers to the mourning of (*hespedo shel*) the Evil Impulse" (see par. D). The *Yerushalmi*'s concern at this juncture in the argument is to identify who died, rather than to convey how the people responded emotionally to the death.[41] Though the *Yerushalmi* uses a term that *can* convey sorrowful mourning, it need not necessarily do so in this context, as the range of meanings including 'to eulogize' suggests. I would argue that the *Yerushalmi* uses a cognate of the root (*sfd*) to connect the death it outlines with the mourning described in the verse, for there it states the whole "land mourned" (*v'safda*). The language of mourning, then, is used to link the interpretation to the verse, and not necessarily to convey the emotional quality of sorrow.

By way of contrast, the second term (*avelin*) is used in a way that implies a sorrowful response to death. The term *avelin* appears in the body of the first *qal v'ḥomer* argument about the Messiah, where it stands in direct contrast to the *joy* of the Water-Drawing Festival. The text there argues that since separation between men and women is maintained in times of mourning, it is certainly needed in times of joy. In this case, the mourning *does* imply sorrow, since that is exactly what establishes it as the opposite of joy. This second term (*avelin*), however, applies only to the Messiah, who is the subject of the first

39 See Jastrow, *Dictionary*, 7, 1011 and Adin Steinsaltz, *The Talmud, The Steinsaltz Edition: A Reference Guide* (New York: Random House, 1989) 158, 183. I would like to thank Rabbi Barry Freundel for alerting me to the significance of the halakhic connotations of these two terms for mourning.

40 Hauptman understands the term in exactly the manner outlined here. She translates the key phrase as follows: "If, during a eulogy for the dead. . . ." See her "Mishnah As a Response to 'Tosefta,'" 20, n.13.

41 Indeed the *Bavli*'s paraphrase of this line corroborates the conclusions of this analysis. When the *Bavli* introduces the two opinions as to whose death this verse refers, it substitutes the term 'was slain' for 'was mourned' in the *Yerushalmi*. The *Bavli*'s paraphrase of the *Yerushalmi* reads: "One says this refers to the Messiah, son of Joseph, and the other says it refers to the Evil Impulse, who was slain (*sheneherag*)" (*b.Sukkah* 52a).

qal v'ḥomer argument. As noted above, each *qal v'ḥomer* argument has an exclusive relationship with only one of the two opinions as to whose death is being mourned. This linguistic evidence, in conjunction with the evidence provided by the structure of the passage, suggests that according to the *Yerushalmi* the death of the Evil Impulse was not mourned with sorrow.

My final observation concerns the second *qal v'ḥomer* argument, which compares a time when the Evil Impulse does not exist to a time when he does exist. As will be recalled, the text (par. E.1) argues that if separation between men and women is maintained when the Evil Impulse *does not* exist, then certainly separation is needed when the Evil Impulse *does* exist. Though it goes unstated, the argument assumes there is a quantitave correlation between the Evil Impulse and sin. The greater the influence of the Evil Impulse, the greater the likelihood that sin will result. The lesser the influence of the Evil Impulse, the lesser the likelihood that sin will result. This equation presumes that the Evil Impulse is a goad to sin. The idea that the Evil Impulse is a goad to sin dovetails nicely with our previous conclusion that the death of the Evil Impulse was not mourned. Discovering that this source conceptualizes the Evil Impulse as an obstacle to righteousness explains why his death is no occasion for sorrow. Removing the obstacle to righteousness against which ordinary folk struggle gives them less to worry about. In fact, one might even expect them to be happy about such an outcome. A coherent picture begins to emerge in which the presence of the Evil Impulse is seen in essentially negative terms. When present he goads people to sin and thus his removal and absence is no occasion for sorrow.

Only one piece of evidence interferes with the emerging hypothesis that the *Yerushalmi* evaluates the Evil Impulse in negative terms and presumes that he was not mourned. The biblical verse from Zechariah states in unequivocal terms that, irrespective of whose death it was, "the whole land mourned." Consequently, the opinion that the verse refers to the death of the Evil Impulse, with the implication that he was not mourned with sorrow, stands in an uneasy tension with the biblical text on which this interpretation is based. The result is an ambiguous text that offers its readers two possible interpretations: either the Evil Impulse was mourned with sorrow or he was not. This ambiguity casts doubt on the other interrelated aspects of our characterization of the Evil Impulse. Perhaps the Evil Impulse should not be evaluated in exclusively negative terms? Perhaps the characterization of the Evil Impulse as a goad to sin must also be rethought? The *Yerushalmi*'s ambiguity on these issues attracts the attention of the *Bavli*, where the same ambiguities are vividly represented and even amplified. Thus, even while the *Yerushalmi* resolves at least some of the questions generated by the tannaitic sources, it leaves its readers with another set of questions to ponder.

Conflicting Representations of the Evil Impulse

Before turning to the *Bavli*'s response to this ambiguity in the *Yerushalmi*, it is important to note the broader cultural discourse on the Evil Impulse within which these developments take place.[42] The *Yerushalmi*'s ambiguity in its representation of the Evil Impulse reflects ambivalences and tensions in the rabbinic understanding of the nature of the Evil Impulse more generally.[43] According to Daniel Boyarin, "There were two partially conflicting psychologies within rabbinic culture. One was more straightforwardly dualistic, considering the human will to be composed of good and evil instincts . . . ; the other psychology . . . regarded the human being as having a singly monistic nature, which is however dialectical in structure. The force within the human being that causes him or her to create is precisely the same force that causes human beings to do evil and destroy."[44] In the dualistic conception of the human will, the Evil Impulse is a goad to sin and is evaluated in negative terms, while the Good Impulse is a goad to righteousness and is evaluated in positive terms. The dominant representation in the *Yerushalmi* of the Evil Impulse as an entity that does not merit mourning with sorrow would seem to draw on this dualistic model of the human will.

42 Both Cohen, *Rereading Talmud*, 141, 144, 170–72, 217–19 and Rubenstein, *Talmudic Stories*, 14–15, 21–23 follow the new historicist approach modeled by Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: Univ. of California Press, 1993). All three scholars offer sophisticated literary analyses informed by the conviction that literary production is intimately connected with larger cultural developments.

43 In addition to Boyarin cited below, F. C. Porter understands the rabbinic notion of Evil Impulse to be replete with tensions. See F. C. Porter, "The Yecer Hara: A Study in the Jewish Doctrine of Sin," *Biblical and Semitic Studies: Yale Historical and Critical Contributions to Biblical Science*, Yale Bicentennial Publications (New York: Scribner's, 1901) 117–23, with his most concise statement of the tension on 120. See also the elegant summary of difficulties associated with the Evil Impulse as it is treated in the secondary literature, Jonathan Schoffer, "The Making of a Sage: A Study in Rab-binic Ethics" (manuscript).

44 Boyarin, *Carnal Israel*, 64. The extent to which these two conceptions co-exist in a conflicted way within the rabbinic corpus can be gauged by scholarship which has variously characterized the Evil Impulse according to both dualistic and monistic conceptions. On the one hand, George Foote Moore, *Judaism in the First Centuries of the Christian Era* (repr.; Peabody, Mass.: Hendrickson, 1997) 480, 482, 483, 485, 489, and Solomon Schechter, *Aspects of Rabbinic Theology* (repr.; Woodstock, Vt.: Jewish Lights, 1993) 267–68, describe the Evil Impulse in monistic terms. In their writings the Evil Impulse is characterized as a force to fight against and conquer in order to do good. On the other hand, while acknowledging both conceptions, Porter, "The Yecer Hara," 125, suggests that the dualistic conception is the dominant one. Michael Fishbane follows the approach pursued in this article, which is to note the co-existence of dualistic vocabulary and monistic conception in the same textual setting. See his *The Kiss of God: Spiritual and Mystical Death in Judaism* (Seattle: Univ. of Washington Press, 1994) 7–8.

Boyarin argues that the Rabbis inherited the dualistic vocabulary of Good Impulse and Evil Impulse from Hellenistic Judaism. They did not, however, use it to articulate the dualistic conception of the human will exclusively. They also used the inherited vocabulary in an ironic way to represent the monistic, dialectical model of the human will, in which the evil is a necessary companion to and component of the good. In this conception the Evil Impulse functions as a goad to *righteousness*. The fact that the same vocabulary is used to describe two conflicting conceptions of the Evil Impulse suggests that the lines between them may not always have been clearly demarcated, and that rabbinic culture itself felt ambivalent about the nature of the Evil Impulse.[45]

The broader rabbinic discourse provides a useful framework for understanding how readers of the *Yerushalmi* might make sense of its textual ambiguity. Whereas the dominant model of the *Yerushalmi* is the dualistic one, with the Evil Impulse evaluated in negative terms and figured as a goad to sin, the hint that the Evil Impulse is mourned might suggest to readers a more positive evaluation of the Evil Impulse along the model of the monistic conception described by Boyarin, with the Evil Impulse figured as a goad to righteousness.

A parallel to the *Yerushalmi* enables us to see how a dualistic conception of the Evil Impulse can give way to a monistic one (and *vice versa*). The text of interest is a short *midrashic* comment on Psalms 48:14 found in *Genesis Rabbah*. The source, however, is best understood in light of a slightly earlier midrashic comment on Deut 6:5 found in the *Sifre* to which we will turn first.

> [*You shall love the Lord your God*] *with all your heart (lebabkhah).* (Deut 6:5). [The word 'heart' is written with two bet's to teach that you should love God] with both of your Impulses: the Good Impulse and the Evil Impulse. (*Sif. Deut., piska* 32)[46]

This *midrash* attributes significance to the doubled letter *bet* in the word 'heart.' Since the heart was considered the seat of the good and evil impulses, it made logical sense for the Rabbis to equate the two *bet*'s with the two impulses.[47] Though this *midrash* uses the dualistic vocabulary of good and evil, *both* impulses are put in service of God. Michael Fishbane explains that if the true

45 Boyarin, *Carnal Israel*, 75; Porter, "The Yecer Hara," 109; and Schechter, *Aspects of Rabbinic Theology*, 262, all note that sometimes the monistic model is represented by the term *yetzer* without the modifier 'evil.' Thus there are linguistic markers to distinguish the differing conceptions of the Evil Impulse from each other. These linguistic distinctions, however, are not consistently maintained. The sources treated in this essay routinely use the dualistic vocabulary to represent both monistic and dualistic conceptions.

46 For parallels see *m.Ber.* 9:5 and *t.Ber.* 7:7.

47 See Gen 6:5, 8:21 and discussion in Porter, p.110. On the heart as the seat of the mind and will, see Moore, *Judaism*, 480, 486, and Schechter, *Aspects of Rabbinic Theology*, 255–61.

devotee of God "sublimate[s his] base instincts to divine ends . . . the negative effects of the evil inclination would be overcome."[48] The Evil Impulse *can* be put in service of righteous ends. Boyarin explains that in this *midrash* "the term 'evil' in 'evil desire' is turned on its head, from that which is condemned to that which is praised above all."[49] This source displays a number of features characteristic of the monistic model. It subverts the dualistic vocabulary even as it adopts it and, not without a certain amount of irony, it figures the Evil Impulse as a goad to righteousness.

The *midrash* on Ps 48:14 borrows from the *Sifre* the notion that two *bets* in the word 'heart' represent the two Impulses.

> R. Hiyya said: *Fix your hearts (libkhem) towards the ramparts* (Ps 48:14). 'Fix your hearts (*lebabkhem* [with two *bets*])' is not written here; rather it says 'your hearts (*libkhem* [with one *bet*])' [in order to teach] that the Evil Impulse has no sway in the time to come. (*Gen. Rab.* 48:11)

This *midrash* examines a verse from Psalms where the word 'heart' is spelled with only one *bet*. This being the common spelling, one would not expect this orthographic detail to merit comment. However, when read against the backdrop of the previous *midrash*, this detail does take on significance. If the doubling of the *bet* in Deut 6:5 suggests the presence of both impulses, then the single *bet* here in Ps 48:14 should suggest the presence of only one impulse. R. Hiyya logically deduces that in the messianic era suggested by the Psalms context only the Good Impulse will remain in the human heart, and so he states "the Evil Impulse has no sway in the time to come."[50] Though this *midrash* does not contain any explicitly dualistic vocabulary, it takes a dualistic model of the human will for granted when it associates the two *bets* with the two Impulses and a single *bet* with a single Impulse. Here, however, unlike in the *Sifre*, the dualistic language is *not* ironized. The Evil Impulse, as its name suggests it should be, is

48 See Fishbane, *The Kiss of God*, 5. He also notes that the continuation of the *midrash* represents the Evil Impulse as submitting to a continual death, in order that the heart may remain whole. Fishbane discusses yet another text (*b.Ber.* 61b) which employs the dualistic vocabulary of good and evil impulses, and explicitly associates them with the righteous and the wicked. There he shows how the dualistic vocabulary conceals a monistic conception, in which the Evil Impulse plays an essential role in supreme devotion to God by offering itself up to be slain. See Fishbane, *The Kiss of God*, 7–8.

49 *Carnal Israel*, 64.

50 The absence of the Evil Impulse in the time to come is integrally connected to the fact that the time to come is void of moral ambiguities. For the Rabbis the Evil Impulse exists only in situations where moral choices are to be made. Rabbinic literature routinely portrays beings that exist outside of the sphere of moral choices, such as angels, animals, fetuses, and even children, as having no Evil Impulse. See discussion in Porter, "The Yecer Hara," 115–16, and Moore, *Judaism*, 484.

evaluated in negative terms. The idyllic messianic era is marked by the absence, or at least neutralization, of the Evil Impulse. That is, life gets better when the Evil Impulse no longer exists to bother people and lure them into sin.[51]

The *midrash* on Ps 48:14 is of particular interest because of the assumptions it shares with the second *qal v'ḥomer* argument in the *Yerushalmi*. Like the *Yerushalmi*, the *midrash* understands the Evil Impulse to be a goad to sin and imagines the absence of the Evil Impulse at the end of time in generally positive terms. While the *midrash* is cryptic, we can speculate about additional assumptions it might share with the *Yerushalmi*. J. Theodor and Ch. Albeck note an element of wordplay implied by R. Hiyya's interpretation of the verse.[52] Drawing on an interpretation of Ps 48:14 in *y.Meg.* 73b, they note that the word "ramparts" (*ḥeilah*) can be rendered as a version of the noun "dance" (in biblical Hebrew *maḥol*, in rabbinic Hebrew *ḥolah*).[53] Following this suggestion, the *midrash* understands the phrase "set your hearts to the ramparts" as "set your hearts to dancing." In this way of reading, this verse from Psalms speaks about a celebration that will occur in the end of time. R. Hiyya's insight is to identify the cause of the celebration. He discerns in the single *bet* a subtle hint of the cause of the dancing. The influence of the Evil Impulse will be removed and people will have but a single, good impulse. Thus, one similarity between the *midrash* to Ps 48:14 and the *Yerushalmi* can be seen in how they both understand the removal of the Evil Impulse in positive terms. In the *midrash*, it is a distinct cause for celebration. While the *Yerushalmi* does not say the death of the Evil Impulse is a cause for celebration, it distinguishes his death from that of the Messiah, which *is* a cause for sorrowful mourning.

Theodor and Albeck speculate about an additional similarity between the *midrash* and the *Yerushalmi*.[54] They suggest that the point of the *midrash* is to say that *even though* there will be dancing (i.e., great celebration) in the time to come, nonetheless, the Evil Impulse will have no sway.[55] The idea that joy (and its opposite, sorrow) should be a significant factor in evaluating the potential damage that the Evil Impulse can do resonates with the *qal v'ḥomer* argument which argues that certainly one needs separation between men and women in

51 We have here a great irony. The *midrash* on Psalms borrows the dualistic motif from a source which itself does not employ a dualistic conception (the *Sifre*). But the source that *does* display a dualistic conception does not actually contain the dualistic vocabulary.

52 See Jehuda Theodor and Chanoch Albeck, eds., *Midrash Bereshit Rabbah* (3 vols., repr.; Jerusalem: Wahrmann Books, 1965) 2:489.

53 See Jastrow, *Dictionary*, 433 for this definition and its connection with Ps 48:14. Both Jastrow and Theodor-Albeck link the term *ḥeilah* in Ps 48:14 with dancing on account of a word play in *y.Meg.* 73b, 2:4.

54 It must be noted, however, that Theodor and Albeck do not explicitly mention our source in the *Yerushalmi*, which makes congruity between the *Yerushalmi* and their interpretation of the *midrash* all the more striking.

55 See Theodor and Albeck, *Midrash Bereshit Rabbah*, 489.

times of joy if it is maintained in times of sorrow. Both sources recognize that joyful occasions create an opening for the Evil Impulse to be a destructive force.

These similarities suggest a common tradition which may underlie both sources: in the time to come the Evil Impulse will die; his death will be one of the signs of redemption, for he will no longer hold sway over mankind. Intrinsic to this tradition is the dualistic conception of the Evil Impulse as a goad to sin. His absence is greeted with joy, not mourning. Additionally, this common tradition sees a link between a general mood of joy or sorrow, on one hand, and the propensity of people to sin, on the other. When a general mood of joy pervades, people are more inclined towards sinful behavior.

The *midrash* on Ps 48:14 proves important to our analysis because it, like the *qal v'ḥomer* arguments in the *Yerushalmi*, serves as a source for the *sugya* in the *Bavli* to be discussed presently. When the *Bavli* responds to the question raised by the tannaitic sources – on what authority may one introduce changes into the Temple structure? – it draws heavily on the *Yerushalmi*'s answer to the same question. In reproducing the *qal v'ḥomer* argument of the *Yerushalmi*, however, it borrows the language of the *midrash* on Ps 48:14 to describe the time when the Evil Impulse no longer exists. Instead of using the language of the *Yerushalmi* and phrasing the comparison as one between a time when "the Evil Impulse no longer exists" and a time when "he still exists," the *Bavli* uses the language of the *midrash* and phrases the comparison as one between a time "when the Evil Impulse no longer holds sway" and a time when "he still holds sway."[56]

The *Bavli*'s familiarity with the language of the Psalms *midrash* may well suggest a familiarity with the *midrash* on Deut 6:5, on which it depends heavily. Even though the two *midrashim* offer sharply divergent views of the Evil Impulse, they share an exegetical motif.[57] They both read the number of *bets* in the word "heart" as an indicator of the number of Impulses present at a given time. I would like to suggest that the strong association between these two *midrashim* offers the *Bavli* a way to make sense of the textual ambiguity it encounters in the *Yerushalmi*. The fact that the two *midrashim* share a common exegetical motif, yet represent the Evil Impulse according to both dualistic and monistic conceptions suggests to the *Bavli* that monistic and dualistic representations of the Evil Impulse co-exist with each other, albeit in an uneasy tension. Even though the *Yerushalmi* explicitly evidences a dualistic conception of the Evil Impulse, its textual ambiguity may be understood to hint at a monistic conception of the Evil Impulse. When the *Bavli* responds to the textual ambiguity in

56 In addition, the *Bavli* follows the *midrash* by locating these events explicitly "in the time to come," whereas the *Yerushalmi* only implies as much.

57 See James Kugel, *In Potiphar's House*, 5, 253–59 and *The Bible As It Was*, 28–34 on exegetical motifs and their ability to travel.

the *Yerushalmi*, it does so against the backdrop of a broad cultural discourse that itself alternates between figuring the Evil Impulse as a goad to sin and as a goad to righteousness.

Reconfiguring the Yerushalmi

The literary creativity evident in the *Bavli*'s discussion of *m.Sukkah* 5:2 is prompted in large part by the ambiguities in the *Yerushalmi*'s discussion of the same source: Is the Evil Impulse mourned with sorrow or not? Is he a goad to sin or righteousness? Is he to be evaluated in negative or positive terms? The most dramatic and interesting moment in the *sugya* is clearly a response to these questions left unanswered by the *Yerushalmi*.[58] The *Bavli*'s response, however, is not to privilege one paradigm of the Evil Impulse over another. The fact that the broader cultural discourse represents the Evil Impulse according to conflicting paradigms suggests to the *Bavli* that the two conceptions of the Evil Impulse, distinct though they may be, are intrinsically intertwined. Indeed the two conceptions must co-exist, albeit in an uneasy tension with each other. The *Bavli*'s response to ambiguity in the *Yerushalmi*, then, is to amplify it and exploit the resulting tension for dramatic effect. The question that remains to address in this final section is how the *Bavli* calls attention to the monistic point of view, since its sources (the *qal v'ḥomer* arguments in the *Yerushalmi* and the *midrash* on Ps 48:14) essentially represent the Evil Impulse according to the dualistic conception.

As noted in the introduction, the *Bavli* is a traditional text, conserving and transmitting earlier sources for the most part. Literary creativity, then, results from the *Bavli*'s manipulation of its inherited sources. In this case, I will argue that the *Bavli* highlights what was merely implicit in the *Yerushalmi* when it *reconfigures* the materials that it adopts.

The *Bavli*'s discussion of *m.Sukkah* 5:2 draws heavily on the *Yerushalmi*'s treatment of the same source. The structure of the *Yerushalmi*'s discussion – the questions it asks and the sources it brings in response – is replicated very closely in the *Bavli*.[59] We can see the *Bavli*'s dependence on the *Yerushalmi* very clearly in the first part of the *sugya*:

> What was the 'great enactment' [of which the Mishnah speaks]? R. Eleazar said: It is just like we have taught [in tannaitic tradition]:

58 Gray notes that in a number of cases, a *sugya* in the *Bavli* will respond to questions left unanswered by the parallel *sugya* in the *Yerushalmi*. See her "A Talmud in Exile," 255–68.

59 Again drawing on Gray's criteria to determine literary dependence of the *Bavli* on the *Yerushalmi*, we note structural and topical similarities between the two talmudic discussions of *m.Sukkah* 5:2, accompanied by a thoroughgoing editorial reworking of the materials from

> [The Women's Court] was smooth initially, then they surrounded it with a balcony, and made an enactment [*hitqinu*] so that women would sit above and men below (*m.Mid.* 5:2).
>
> The sages taught: Initially the women [would watch] from the interior and the men from the periphery, but this would lead to levity.
>
> Then they made an enactment [*hitqinu*] that women should sit on the periphery and men in the middle, but this still would lead to levity.
>
> Then they made an enactment [*hitqinu*] that women should sit above and men below.
>
> How could they do this? Isn't it written [concerning Solomon who built the Temple according to God's instructions]: *Everything has been given in writing from the hand of God; he has made me wise* (1 Chr 28:19)?
>
> Rav said: They found a verse [from Scripture] and expounded [it]: *And the land mourned, each family by itself, the family of the House of David by themselves and their womenfolk by themselves* (Zech 12:12). (*b.Sukkah* 51b–52a)

Like the *sugya* in the *Yerushalmi*, this *sugya* begins by asking to what the Mishnah refers when it speaks of a "great enactment." The two tannaitic parallels to *m.Sukkah* 5:2 are then cited. The sources are slightly rewritten, however, to conform to the standard formula for narrating an enactment.[60] Both *m.Mid.* 5:2 and *t.Sukkah* 4:1 now introduce the second clause with the term 'they enacted' (*hitqinu*), making their relationship to the enactment of which the Mishnah speaks more straightforward than in the original tannaitic sources themselves.[61] The *Bavli*, like the *Yerushalmi*, takes the enactment to be a structural renovation that prevented men and women from mingling while watching the great spectacles of the joyous Water-Drawing Festival. While the tannaitic sources do resolve the initial question, they provoke a new one. Again following the *Yerushalmi*, the *Bavli* inquires into the authoritative basis for making architectural renovations to the Temple structure.[62] The *Bavli*, like the *Yerushalmi*, quotes the verse from Zechariah to legitimate the innovation.

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the *Yerushalmi* by the *Bavli*. See n.35 for a full rehearsal of the *Bavli*'s structural similarities to the *Yerushalmi* and the *Bavli*'s editorial reworkings.

60 As noted above, this change is part of a thoroughgoing editorial reworking of the inherited material by the *Bavli*. See Gray, "A Talmud in Exile," 26, 296, 349 on Babylonian editorial reworking of Palestinian parallels.

61 Hauptman takes note of the *Bavli*'s reshaping of the tannaitic sources as well. She also notes that the *Bavli* lengthens the Toseftan source to make the lead-up to the enactment more dramatic. See Haupmtan, "Mishnah As a Response to 'Tosefta,'" 23, n.23 and 24.

62 The *Bavli*, however, intensifies the question by citing a verse from Scripture which implies that

Bavli's method of explicating the verse from Zechariah appears on the surface to be very similar to the *Yerushalmi*'s. Like the *Yerushalmi*, the *Bavli* develops a two-pronged *qal v'ḥomer* argument to establish the relevance of the verse from Zechariah to the Water-Drawing Festival. Closer inspection, however, reveals subtle distinctions that arise from the *Bavli*'s reconfiguration of the material it has inherited:

A. *And the land mourned, each family by itself, the family of the House of David by themselves and their womenfolk by themselves* (Zech 12:12).

B. They said: Can these things not [be understood in terms of] a *qal v'ḥomer* argument?

C. If in the time to come when they are engaged in mourning (*she'oskin b'hesped*) and the Evil Impulse holds no sway over them, the Torah ordained that men be by themselves and women by themselves, then now when they are engaged in joy and the Evil Impulse holds sway over them, is it not all the more necessary?

D. This mourning (*ha hespeda*), what caused it?

E. Rabbi Dosa and the sages were split over the matter:

F. One said it was the Messiah, son of Joseph, and the other said it was the Evil Impulse, who was slain (*sheneherag*).

Like the *Yerushalmi*, the *Bavli* employs a *qal v'ḥomer* argument to establish the relevance of the separation between men and women spoken of in the Zechariah verse and the Water-Drawing Festival. As suggested at the end of the previous section, the *Bavli*'s language in the *qal v'ḥomer* argument reflects the usage in the *midrash* on Ps 48:14 rather than that of the *Yerushalmi*. Like the *midrash*, the *Bavli* speaks of a time "when the Evil Impulse no longer holds sway," rather than using the language of the *Yerushalmi*, which speaks of a time "when the Evil Impulse no longer exists." The different language notwithstanding, however, the *Bavli*'s text is adopted more or less intact from the *Yerushalmi*. The *Bavli* loosely preserves both the *Yerushalmi*'s statement concerning the two opinions as to whose death the verse alludes (par. F) and the two derivative *qal v'ḥomer* arguments (par. C; though in the *Bavli* they have been woven together into a *single* argument). The *Bavli*, however, reverses the order of these two constituent parts of the source, so that the *qal v'ḥomer* arguments now appear *before* the two opinions on which they are based. As will be recalled, in the *Yerushalmi* the two opinions appear *before* the two

the Temple was initially built according to divine instructions and therefore should have been perfect in all regards.

qal v'ḥomer arguments. This rearrangement makes the *qal v'ḥomer* argument appear as an independent tradition. It appears to have no connection with the two opinions from which it, in fact, has been shown to derive.[63] The question, "This mourning, what caused it?" – which elicits the two opinions as to who died – appears as an afterthought, unrelated to the main argument at hand. The *Yerushalmi*'s treatment of the same verse, however, reveals how integral these two opinions are to the argument. They provide a starting point, without which there would be no *qal v'ḥomer* arguments at all! Rearranging the composite parts of the source from the *Yerushalmi* has a number of consequences. I argue that the *Bavli* reconfigures the material that it inherits from the *Yerushalmi* precisely because it wants to achieve the resultant effects, for this new arrangement foregrounds the tension between the two conceptions of the Evil Impulse.

The first consequence of this rearrangement follows from the fact that the two *qal v'ḥomer* arguments appear as an independent tradition. As observed above, when the *Bavli* cites the two *qal v'ḥomer* arguments, it presents them before presenting the two opinions as to who died. As the *Yerushalmi* makes clear, these two *qal v'ḥomer* arguments actually derive from the two opinions. By citing the *qal v'ḥomer* arguments before the opinions, however, the *Bavli* represents the arguments as following from logic alone. As a result, the two arguments no longer need be seen as mutually exclusive, each based on its own opinion as to who died, respectively. Since there is nothing intrinsically contradictory about the logic of the two arguments, the *Bavli* amalgamates the two arguments into a single *qal v'ḥomer* argument. The *Bavli* reasons as follows: if there is separation between men and women when people are mourning (from the *Yerushalmi*'s first *qal v'ḥomer* argument) *and* there is little impetus to sin, since the Evil Impulse no longer exists (from the *Yerushalmi*'s second *qal v'ḥomer* argument), then certainly we need separation between men and women on a joyous occasion (from the *Yerushalmi*'s first *qal v'ḥomer* argument) *and* when the inclination to sin is great since the Evil Impulse still exists (from the *Yerushalmi*'s second *qal v'ḥomer* argument). When detached from the two mutually exclusive opinions as to who died, the two *qal v'ḥomer* arguments are completely compatible, and combine to make a more forceful argument.

The rearrangement of the composite parts of the *Yerushalmi* source has an additional consequence. When the *Bavli* places the *qal v'ḥomer* argument before the two opinions, it establishes its claims and assumptions *irrespective* of which opinion one holds as to who died. Most significant for our purposes, the *qal v'ḥomer* argument assumes that the verse refers to a time when there was sorrowful mourning.[64] The *Bavli*'s *qal v'ḥomer* argument states that the verse

63 See above pp.14–16.

64 Note that, unlike the *Yerushalmi*, the *Bavli* does not use two different verbs for mourning, for

refers to a time when the people are engaged in mourning *and* the Evil Impulse holds no sway over them. The *Bavli* highlights what was already implicit in the *Yerushalmi*, for there the biblical prooftext states that, whoever died, he was mourned. The *Bavli*'s move, however, brings that assumption into the explicit realm of the Talmud's articulated interpretation of the verse. As a result, the *Bavli* is forced to confront the difficulty posed by the explicit interpretation that the Evil Impulse was mourned with sorrow. By way of contrast, the *Yerushalmi*'s interpretation uses the term *hesped* (the first term for mourning) in the limited sense of 'to eulogize' and uses the term for sorrowful mourning (*avelin*) only with respect to the Messiah in order to suggest that the Evil Impulse was *not* mourned with sorrow.

Unlike the *Yerushalmi*, then, the *Bavli* is forced to reconcile *both* opinions with the fact that these deaths were mourned with sorrow. The *sugya* continues with this task.

> This poses no problem for he who says [the verse refers] to the Messiah, son of Joseph, who was slain, as it is written:
>
> *They shall look to me concerning he who is slain, and they will mourn for him like one mourns for an only son* (Zech 12:10).
>
> But for he who says [the verse refers to] the Evil Impulse who was slain:
>
> Should this occasion mourning? This should occasion joy! Why did they cry?

The challenge does not prove difficult for the person who holds that the verse refers to the death of the Messiah. The *Bavli* simply follows the *Yerushalmi* in presuming that the death of the Messiah was mourned and conveniently produces a prooftext from the same context in Zechariah. However, the person who holds that the verse refers to the death of the Evil Impulse *does* encounter a problem, since common sense dictates that the death of the Evil Impulse should elicit joy. This so-called common sense view of the Evil Impulse in fact derives from the preceding *qal v'ḥomer* argument, which presumes the dualistic conception of the Evil Impulse as a goad to sin. Only if the Evil Impulse is figured as a goad to sin does it make no sense to mourn him. I would argue that the *Bavli* rearranges the constituent parts of the *Yerushalmi* source precisely because it wants to create this problem.[65]

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the *Bavli* has no need to distinguish between mourning with and without sorrow. The *Bavli* assumes that all mourning is with sorrow.

65 It is significant that the *Bavli* chooses to confront both opinions with the fact that the deaths must have been mourned. The *Bavli* might have pursued other questions at this juncture. An

At this moment the reader is confronted full force with the ambiguity that will permeate the rest of the *sugya*. Two mutually exclusive ways to interpret the figure of the Evil Impulse emerge. On the one hand, the *qal v'ḥomer* argument adopted more or less intact from the *Yerushalmi* presumes a dualistic model of the Evil Impulse as a goad to sin, whose death surely would not be mourned (as indeed, it is not in the *Yerushalmi*). The parallel *midrash* to Ps 48:14, whose language the *Bavli* adopts directly, may even go so far as to suggest that the death of the Evil Impulse is an occasion for rejoicing. On the other hand, when the *Bavli* rearranges the composite parts of the *Yerushalmi* source, it produces a new idea, namely that the death of the Evil Impulse *does* elicit mourning. The fact that the *Bavli* introduces a new idea without composing new text, however, leaves the assumptions implicit in the original text intact. The two conflicting sets of assumptions coexist in an uneasy tension that is at once disarming and enchantingly engaging.

The *Bavli*'s question to the person who holds that the verse refers to the death of the Evil Impulse – "Should this occasion mourning? This should occasion joy! Why did they cry?" – gives *direct expression* to the ambiguity that was merely implicit in the *Yerushalmi*. Having articulated this tension directly, the *Bavli* is now in a position to do what the *Yerushalmi* did not: present an alternative conception of the Evil Impulse. Until that happens, however, the reader is temporarily suspended between the two conceptions, sensing the failure of the dominant conception, but not yet grasping the alternate conception. Ambiguity, then, produces dramatic tension, which urges the reader to read on. The *sugya* unfolds the alternate conception with a story that explains how it is that the death of the Evil Impulse does elicit mourning:

> [The matter can be understood] as R. Yehudah expounded [it]:
>
> In the future, the Holy One Blessed be He will bring out the Evil Impulse and slaughter him in front of the righteous and in front of the wicked.
>
> To the righteous he will appear as a towering mountain, and to the wicked he will appear as a single strand of hair.
>
> These will cry *and* these will cry.
>
> The righteous will cry saying, "How is it that we were able to conquer this towering mountain?"

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equally likely line of questioning might have centered on the fact that the *qal v'ḥomer* also assumes that the Evil Impulse no longer holds sway in the time to come. The *Bavli* might have tried to reconcile both opinions with *this* fact. I would argue that the *Bavli*'s line of inquiry is conditioned by the textual ambiguity in the *Yerushalmi* concerning the Evil Impulse and broader cultural ambivalences about the nature of the Evil Impulse.

> And the wicked will cry saying, "How is it that we could not conquer even this single strand of hair?"
>
> And even the Holy One Blessed be He will be astonished with them, as it is written:
>
> *Thus says the Lord of Hosts: even as it will seem remarkable in the eyes of the remnant of the nation, so too in my eyes it will be remarkable* (Zech 8:6).[66]

Here the alternate conception falls into place. The crying is not so much for the sorrow of the death, but rather for the self-recognition that the disclosure of one's battle with the Evil Impulse brings. The tears come because what is revealed is so different from what one might have imagined to have been the case. The tears are neither tears of sorrow nor joy as the initial question implies they might have been, but tears of amazement, awe, and surprise. In depicting the reaction of the wicked and the righteous to the death of the Evil Impulse, the story relates the utter surprise they felt at having a new perspective revealed to them. One guesses that perhaps the wicked imagined that for all the temptation they felt, they were being prodded by a hefty Evil Impulse. To their surprise (and disgrace), they learn they have but battled with a tiny thread of a hair. In a parallel manner the righteous cry in awe of their accomplishment. One guesses that perhaps the righteous discounted their good deeds, assuming, on account of the ease with which they dismissed the Evil Impulse, that it must not have been very large. At the end of time, a very different vision of their battle with the Evil Impulse is revealed to them. Even God shares in the awe and wonder that mark such a dramatic shift in perspective. As the story concludes, "even the Holy One Blessed be He will be astonished with them." The story, then, craftily recasts the tears of sorrowful mourning as tears of astonishment at the reversal of expectations: awe for the righteous and disgrace for the wicked.

The *sugya* cleverly dispels the tension generated by the idea that the death of the Evil Impulse might occasion tears of sorrow by making the tears about something else altogether. When the anonymous voice poses its question, "Should this occasion mourning? This should occasion joy! Why did they cry?" it sets up a false dichotomy between joy and sorrow. In fact, the death of the Evil Impulse occasions neither joy nor sorrow. From this clever solution to one problem, however, flows an ambiguity that permeates the rest of the *sugya*. On one hand, the story confirms that sorrow was *not* experienced at the death of the Evil Impulse, upholding and sustaining the dualistic conception of the Evil

66 Translation adapted to fit the interpretation suggested by the context. The JPS translation suggests a different relationship between the two clauses about God's wonder and the people's wonder: "Thus said the Lord of Hosts: though it will seem impossible to the remnant of this people, shall it also be impossible to Me?"

Impulse that has thusfar dominated the *sugya*. It leaves open the possibility that joy was among the emotions people felt at the death of the Evil Impulse. On the other hand, however, the story resists an altogether dualistic interpretation of the Evil Impulse because it does not state explicitly that his death occasioned joy. The story leaves equally open the possibility that sorrow *was* among the emotions felt by people at this time. In so doing, the story *also* opens itself up to a monistic interpretation of the Evil Impulse. As we will see below, in fact, the story has elements that support *both* dualistic and monistic conceptions of the Evil Impulse.

It is interesting to note that the medieval commentator Rashi is expressly uncomfortable with the *Bavli*'s move to make the tears about neither sorrow nor joy precisely because this move diffuses the dualistic representation of the Evil Impulse that has thus far dominated the *sugya*. In his comments he attempts to restore a dualistic framework for understanding the Evil Impulse as a negative entity (a goad to sin), whose passing, by implication, should elicit joy. In commenting on the tears of the righteous, Rashi explains that the righteous cry because "they remember the sorrow that transpired when they tried to conquer the Evil One in this world [i.e. when he still existed]."[67] Rashi's interpretation links the tears to the *memory* of a unpleasant encounter and difficult battle with the Evil Impulse. He strongly dissociates the tears of the righteous from the new perspective that is gained at the time of his public execution.[68] By linking the tears with the memory of the Evil Impulse's lifetime, Rashi affirms that the Evil Impulse is a negative influence during his lifetime. In so doing, Rashi reasserts a dualistic framework. Rashi leaves open the theoretical (but merely implicit) possibility that his removal should bring joy.

Rashi's interpretation of the crying of the righteous would seem to violate the straightforward meaning proposed by the story. The story explicitly shows the crying to be about something *other* than sorrow or joy. For the *Bavli*, the righteous, the wicked, and God share a common experience: they feel awe, amazement, and surprise. For the righteous and the wicked this profound emotion is expressed through tears. Though the particular interpretation that Rashi puts forward may seem strained, his motivation is understandable. As noted above, the *Bavli*'s *qal v'ḥomer* argument assumes a dualistic conception of the

67 See Rashi, s.v. *tzaddim bokhim*, *b.Sukkah* 52a.

68 R. Samuel Edels (Maharsha), who analyzes Rashi's interpretation in great detail, criticizes Rashi on just this point. He says that Rashi's explanation of the tears fails to account adequately for them as tears occasioned by the moment of death. In Rashi's interpretation of the tears, they need not be occasioned by the death of the Evil Impulse per se. One might remember one's battle with the Evil Impulse at other times, as well. Edels suggests that the unique feature of tears occasioned by death is that they respond to the new absence. They indicate that someone is more dear when living than when dead. See *Ḥidushei Halakhot and Aggadot HaMaharsha*, *Sukkah* 10b on *b.Sukkah* 52a.

Evil Impulse when it presents him as a goad to sin. Rashi's reading merely reflects a desire to discern consistency within the *sugya*.[69]

As diligent as Rashi is in restoring a dualistic framework to the *sugya*, it is not surprising that his interpretation attracts the attention of later commentators. The seventeenth-century Polish commentator R. Samuel Edels (Maharsha) senses (and I believe correctly so) that the *Bavli*'s creative rereading of the mourning in the verse is introduced precisely because it disturbs the reigning dualistic conception of the Evil Impulse. Edels argues vigorously against Rashi's imposition onto the story of a dualistic framework and asserts in its place a monistic reading. He criticizes Rashi's explanation of the tears of the righteous on the grounds that they no longer have any resemblance to tears of mourning. As Edels points out, mourning implies that someone is "dearer in life than in death."[70] For the righteous, he avers, the Evil Impulse *is* good (*shehu tov latzaddikim*)[71] since the battle and victory over the Evil Impulse helps them accrue merit and earn life in the world to come. The righteous cry at the death of the Evil Impulse because it represents a loss of opportunity. No more will it be possible for them to accrue merit and earn life in the world to come by battling him. Edels' interpretation of the tears differs from Rashi's in several important respects. Whereas Rashi sees the Evil Impulse in a negative light because it is painful to struggle with him, Edels sees him as a positive force because he leads the righteous to life in the world to come. Whereas Rashi is disturbed by the story's insinuation of a non-dualistic framework of interpretation, Edels embraces the monistic possibilities in the story. It should be noted, however, that both Rashi and Edels interpret the crying of the righteous in a way that goes against the straightforward representation of the crying in the story. According to the story itself, the tears are neither tears of sorrow nor tears of joy. Instead they are tears of amazement. Both Rashi and Edels reread the tears in a way that implies either joy or sorrow at the death of the Evil Impulse. What provokes them both to abandon the explict meaning of the tears so readily? I believe that both Rashi and Edels are responding to the way in which the *Bavli*'s reading of the tears disturbs the reigning conception of the Evil Impulse as dualistic. Whereas Rashi feels the need to impose consistency on the *sugya*, Edels sees this de-centering as an opportunity to infuse the representation of the Evil Impulse in the *sugya* with a monistic interpretation.

69 The impulse to understand the Evil Impulse according to a single, unified, and consistent paradigm is hardly a feature of traditional commentators alone. Indeed G. F. Moore and Schechter consistently represent the Evil Impulse according to a monistic conception. By way of contrast, Porter argues for the dominance of the dualistic conception. See Moore, *Judaism*, 480, 482–3, 485, 489; Schechter, *Aspects of Rabbinic Theology*, 267–8; and Porter, "The Yecer Hara," 125.

70 See *Ḥidushei Halakhot and Aggadot HaMaharsha, Sukkah* 10b on *b.Sukkah* 52a.

71 He grounds this insight in a well-known *midrash* on Gen 1:31: "*Behold it was very good*. This is the Evil Impulse" (*Gen. Rab.* 9:3, Theodor and Albeck, 71–72). It is interesting that the Mahar-

As a contemporary reader of traditional commentators, I take the sharp divergence in interpretation between Rashi and Edels to be an index of ambiguity within the *sugya* itself.[72] The fact that the story can support contradictory interpretations suggests genuine gaps, which the reader must fill in by turning to other textual details to support one or the other interpretative hypothesis. As will be recalled from the Introduction, Sternberg explains that the aesthetic appeal of ambiguity is that it "calls attention to the literary texture as such. . . . Each detail assumes importance, deriving from the support or assistance it offers to the hypotheses."[73] Textual ambiguity invites readers to be more attentive. They are asked to engage the text in all of its subtle details more deeply.

Identifying two opposing interpretations of the Evil Impulse in the *sugya*, then, invites us too to read the story more deeply. What textual details can we identify that support a monistic or dualistic view of the Evil Impulse? Readers of both mindsets can find ample textual detail to buttress their interpretation, as the story is rich and suggestive, even while it fails to provide a clear-cut resolution to our question.

Some readers will focus on the quantitative correlation between the Evil Impulse and righteousness or wickedness. As will be recalled, to the righteous the Evil Impulse appears as a towering mountain, whereas to the wicked he appears as a single strand of hair. In this story, the greater the influence of the Evil Impulse the more *righteousness* results. The reader will perhaps initially be surprised that it is the *righteous* who are associated with a hefty Evil Impulse. The reader may have also been surprised to find that the wicked had such a small Evil Impulse. For all the wickedness they have done, one would have expected a huge towering Evil Impulse prodding them into sin. These observations call to mind Boyarin's description of the monistic, dialectical model of the human will, in which "good is inseparable from evil, because they are one and the same force. When one is strengthened, the other is necessarily strengthened as well."[74] We can connect Boyarin's description of the monistic conception with the righteous in the story who see the Evil Impulse as a towering mountain. For the righteous, good and evil are seamlessly interwoven. The two forces are powerfully interconnected in such a way that more Evil Impulse ironically leads to

sha grounds his monistic interpretation of the story in this *midrash* since this is one of the *midrashim* Boyarin uses to explore the monistic conception of the Evil Impulse. See *Ḥidushei Halakhot and Aggadot HaMaharsha, Sukkah* 10b on *b.Sukkah* 52a and Boyarin, *Carnal Israel*, 63–66.

72 Cohen notes that textual ambiguities in the *Bavli* (or "ungrammaticalities," as he calls them) are often the site of conflicting interpretations. See Cohen, *Rereading Talmud*, 166.

73 Sternberg, *The Poetics of Biblical Narrative*, 228.

74 See *Carnal Israel*, 64–65.

75 The strong association between the Evil Impulse and the righteous, and the quantitative equa-

more, rather than less, righteousness.[75] In this interpretation of the story, the Evil Impulse is a goad to righteousness.

The monistic reading, however, is hardly the only one supported by the textual evidence. One can equally as well argue for a dualistic conception of the Evil Impulse in the story. A dualistic interpretation would counter the above with the astute observation that the variable sizes of the Evil Impulse (large for the righteous, miniscule for the wicked) are a matter of *appearances*, not reality. The story explicitly states that the Evil Impulse "*appeared* to them . . . as a towering mountain . . . [and] as a single strand of hair." Such an interpretation would also need to explain just how and why a stable entity appears so different to different people. One reason why the righteous and the wicked might see the Evil Impulse in such different ways might be because they have each invested in the struggle with him to a different extent. Whereas the wicked are inclined to minimize the extent of their failure ("Oh, that thing I didn't succeed at, it wasn't worth much anyway"), the righteous who have been so absorbed in their struggle with the Evil Impulse see it as greater than it really is. As a colleague eloquently put it to me in a personal communication: "Those engaged in self-cultivation become more and more aware of their wayward tendencies."[76] The divergent ways in which the Evil Impulse appears to the wicked and righteous, then, is a function of the extent to which they are engaged in self-cultivation and sensitized to their shortcomings. In this way of reading the story, the disparity in the appearance of the Evil Impulse to the wicked and righteous has no grounding in reality. The dualistic interpretation of the story would further stress that both the wicked and the righteous recall their *struggles* with the Evil Impulse. In the story, the tears come when they recollect: "How is it that we were able to conquer this towering mountain? . . . How is it that we were unable to conquer this single strand of hair?" By using the term

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tion (more Evil Impulse equals more righteousness) implied by the image of the towering mountain calls to mind a classic expression of the monistic position which can be found on the bottom of *b.Sukkah* 52b: "Every man who is greater than his companion, his Impulse [i.e., Evil Impulse] will be greater too." Rendered into colloquial English, we might put it as follows: "The greater the man, the greater the Evil Impulse." This formulation expresses the same quantitative equation between the Evil Impulse and righteousness as we found in the image of the towering mountain as opposed to the the single strand of hair. For a discussion of "the greater the man, the great the Impulse," as exemplary of the monistic conception of the Evil Impulse, see Boyarin, *Carnal Israel*, 64–65.

76 Electronic communication with Jonathan Schofer of the University of Wisconsin, May 6, 2002. I am especially grateful to Prof. Schofer for sharing his thoughts on the Evil Impulse with me. He is currently engaged in a project examining the Evil Impulse in Avot de R. Natan. While he has not written about the material in *b.Sukkah* his expertise on the Evil Impulse has been invaluable to me. I thank him especially for fleshing out the interpretation of the dualistic perspective. Much of the previous paragraph is based on his dualistic interpretation of the story conveyed to me in electronic communication.

"conquer," the story suggests that the Evil Impulse is a force one battles against. In this dualistic reading, the Evil Impulse is something one must conquer, because he is a goad to sin.

The story itself, then, leaves plenty of room for both dualistic and monistic interpretations of the Evil Impulse. Individual readers may feel more compelled by one reading or another, as indeed both Rashi and Edels did.[77] My goal in presenting the two readings, however, is not to argue for one at the expense of the other. Instead I wish to affirm the very plausibility of *both* readings. Central to the story is a pervasive ambiguity that mitigates against resolving the issue definitively one way or another. Though the *sugya* begins with the so-called common sensical dualistic understanding of the Evil Impulse as an entity whose passing should be greeted with joy, the monistic elements in the story are enough to call the dominant paradigm into question. Though the monistic elements are not necessarily sufficient to overturn the dualistic interpretation definitively, they are enough to provoke the reader's interest and invite deeper engagement with the text. Discerning readers will find textual evidence to support a view of the Evil Impulse as goad to *both* sin *and* righteousness. The ambiguity of the *sugya*, then, makes available to the *Bavli*'s readers the diversity of its own cultural inheritance. Just as the *Bavli* is heir to a set of conflicting traditions concerning the nature of the Evil Impulse, so too its readers must wrestle again and again in each generation with the same questions.[78] The *Bavli*'s traditional character leads it to conserve its inherited sources, but by artfully reconfiguring them, it amplifies the tensions that echo through them.[79]

Conclusions

Having reviewed the developments that produced this *sugya*, we are now in a position to make some general comments. From beginning to end, ambiguity in antecedent texts is a key factor in the production of new texts. An obscure usage in the Mishnah and ambiguity as to whether the enactment was a one-time or yearly event lead the *amoraim* to ask their questions about the so-called 'great enactment': What was it? Who was responsible for it? On what authority did they act? The results of the amoraic discussion can be found in the

77 My own inclination is to prefer the monistic interpretation, but I have been vigorously challenged by my anonymous reader and email correspondent Jonathan Schofer to see the merits of a dualistic interpretation.

78 The very fact that Rashi and Edels disagree about the appropriate way to conceptualize the Evil Impulse stands as a testament to the enduring quality of the ambiguity in the *sugya* and its ability to capture the imagination of each generation of readers.

79 See Elizabeth Shanks Alexander, "Study Practices That Made the Mishnah: The Evolution of a Tradition of Exegesis" (Ph. D. Diss.; New Haven, Conn.: Yale Univ., 1998) 132–90, for a discussion of similar instances in which the *Bavli* reconfigures its amoraic sources. Yonah

Yerushalmi, which cites a tannaitic intertext to resolve the first two questions and develops a two-pronged *qal v'ḥomer* argument to resolve the last question. In a similar manner, ambiguity in the *Yerushalmi*'s representation of the Evil Impulse prompts the *Bavli* to delve deeper into questions about the nature of the Evil Impulse in its *sugya*. As noted, the *Bavli* amplifies the *Yerushalmi*'s ambivalences on the nature of the Evil Impulse. The *Bavli* calls attention to the monistic conception that the *Yerushalmi* merely hints at, by reconfiguring the relationship between the two opinions and the derivative *qal v'ḥomer* arguments. What is, however, of particular interest is the artistic use to which the *Bavli* puts the resulting ambiguity. The moment of disorientation, when the reader has two conflicting impulses – to understand the Evil Impulse according to both the monistic and dualistic conceptions – creates a dramatic tension for the reader. For though the moment of disorientation hints at an alternative conception of the Evil Impulse, the particular specifications upon which the alternate conception rests are hidden from view. Ambiguity in the hands of the redactors of the *Bavli* is a tool for the creation of dramatic tension. By crafting a logically paradoxical moment that its readers must negotiate, the *Bavli* gives enduring life to the intellectual drama of posing and resolving the logical complexities that must have characterized the rabbinic study house.[80]

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Fraenkel also notes that the *Bavli* draws out internal contradictions between sources (albeit tannaitic ones, as opposed to the amoraic one discussed in this article) where none exist in the parallel *sugyot* in the *Yerushalmi*. See his "*Hagufa kashia*," *Tarbiz*, 42:1–2 (1972–73) 266–301 [Heb.]. I thank Ya'akov Elman for pointing me towards this article.

80 In reading the intellectual drama conditioned by the argument's progression as a reflection and re-enactment of the intellectual drama of the rabbinic study houses, I am accepting the invitation issued by Fraade to other scholars to read the two Talmuds as "pedagogic discourse." See Fraade, *From Tradition to Commentary*, 164.

The Role of the *Tanya Nami Hakhi Baraita*

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The technical term תניא נמי הכי is used in the Babylonian Talmud to introduce a *baraita* that follows a *memra*. The similar and oftentimes identical language of the *memra* and *baraita* raises the question: If there was an extant *baraita*, why did the *amora* not quote it?

Traditional responses and most modern scholars suggest that the *amoraim* were not familiar with all of the *baraitot*. This paper first critiques J. Hauptman's theory that *baraitot* formed the *sugya*'s earliest redacted stratum, and J. Frenkel's suggestion that *memrot*, unknown to the *amoraim*, were really *baraitot* that preceded the redaction of the Mishnah. In order to clarify the role of the TNH *baraita*, this paper will analyze other types of *sugyot* in both Talmuds in which *baraitot* follow *memrot*.

The evidence suggests that the *amoraim*'s knowledge of the vast tannaitic literature was more comprehensive than assumed by traditional and modern scholars. The *amoraim* freely quoted *baraitot* without citing their tannaitic origin and in some instances quoted only relevant sections and not the entire *baraita*. This gave the false impression that the *amoraim* were not familiar with the *baraitot*. TNH *baraitot* were inserted into *sugyot* at a later date in order to corroborate the *memrot* or to footnote the tannaitic origin of the *memra*.

The talmudic technical term תניא נמי הכי – "There is also a tannaitic teaching (*baraita*) to this effect" – appears in the Babylonian Talmud nearly 350 times. In the course of the talmudic *sugya*, this idiom introduces a (tannaitic) *baraita* that follows an (amoraic) *memra*. In the vast majority of cases, the language of the *memra* is similarly phrased to the language of the *baraita* and, in many cases, even identical.[1] This raises the questions: What purpose was served by the superfluous *baraita*? If there was an extant *baraita*, why did the *amora* not quote it?

There are several suggested answers to these questions. Traditional responses suggest that the *amoraim* were not familiar with all of the *baraitot*. This idea was first raised in the *Bavli* where the expression ברייתא לא שמיעא ליה ("He did not know the *baraita*") appears (although very infrequently).[2] Rav Sherira

1 See list in Judith Hauptman, *Development of the Talmudic Sugya* (Lanham, Md.: Univ. Press of America, 1988) 225–37.

2 A parallel expression, מתניתא לא שמיע ליה, only occurs once and only in the printed edition of

Gaon explained that many Rabbis had their own collections of *baraitot*, but only the collections of R. Ḥiyya and R. Oshaya were studied in the academies since their versions were superior.[3] Therefore many other *baraitot* were not well known. Rashbam (at *b.Pesaḥ.*101b) commented that "sometimes even the *amora* himself was not aware that his own teaching was actually a *baraita*." Among modern scholars, Jonah Frenkel suggested that the *memrot* were explanations of the Mishnah that, unknown to the *amoraim*, were really *baraitot* that preceded the redaction of the Mishnah.[4] A common supposition among these positions is that the parallel TNH *baraita* was appended to the *sugya* at a later time. Similarly, J. N. Epstein wrote that in many cases the *amora*'s *memra* limits the scope of the Mishnah and the "Talmud" cites a *baraita* to support this limitation.[5]

Alternatively, some modern talmudic scholars explained that in the case of TNH *sugyot*, the *amora* was indeed familiar with the *baraita*. Avraham Weiss suggested that the *amora* quoted the *baraita* without identifying it.[6] Shamma Friedman, commenting on a *memra* cited in the name of R. Yoḥanan, wrote that the *memra* was in fact a *baraita* and that in several cases *amoraim* would quote *baraitot* without signaling their tannaitic origin but rather transmitted them as *memrot*.[7] Once again the common assumption is that the *sugya* was built around the *memra* and that the TNH *baraita* was a much later addition. Judith Hauptman presented a different theory. According to her, *amoraim* were familiar with such *baraitot* because they formed the earliest redacted stratum of the *sugya* and the *memrot* were later added to the *sugyot*.[8]

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the Talmud (it does not appear in manuscripts). It is interesting to note that the assumption that *amoraim* were not familiar with certain *baraitot* is only mentioned within the stammaitic (redactional) parts of the *sugya*. Therefore, within the development of the talmudic *sugya*, this is a later conception that does not necessarily reflect the historical reality. Compare this to *b.B.Bat.* 170b:

> אמר ליה רב נחמן לרב הונא... אי שמיעא ליה לרב הא ברייתא... הוה הדר בי.
> אמר ליה: שמיע ליה ולא הדר ביה.

> Rav Naḥman said to Rav Huna: ... If Rav had known this *baraita*, he would have changed his opinion. He responded to him: Rav did know it and [even so] did not change his opinion.

The possibility that Rav was not familiar with a particular *baraita* is refuted.

3 B. M. Lewin, ed., *Iggeret Rav Sherira Gaon* (Jerusalem: Makor Ltd., 1972) 39.

4 Jonah Frenkel, "Methodologies and Methods in Teaching Talmud," *Netivot* 15 (1979) 120–46.

5 J. N. Epstein, *Mavo LeNosaḥ HaMishnah* (Jerusalem: Magnes Press, 1964) 159.

6 Avraham Weiss, *LeḤeqer HaTalmud* (New York: Feldheim, 1956) 50, 59. For the English reader, Hauptman reviews Weiss' ideas on pp. 8–10.

7 Shamma Friedman, *Talmud Arukh* (Jerusalem: Jewish Theological Seminary of America, 1996) s. v. *nusaḥ*.

8 Hauptman, *Development*, 2.

This article is an attempt to study and determine the purpose of the TNH *baraita*. In the first part of this article I discuss and offer a critique of the opinions of Hauptman and Frenkel as a means to clarify the actual usage of the TNH *baraita*. Afterwards, in order to better understand the role of the TNH *baraita*, I will analyze the similar usage of *memrot* and *baraitot* in both the Babylonian and Palestinian Talmuds to show that the TNH *baraitot* were indeed inserted into *sugyot* at a later date and served no dialectic purpose.

Hauptman's Theory of Tannaitic Proto-*Sugyot*

Hauptman posits that the *baraitot* quoted in the TNH *sugyot* entered these *sugyot* in one of two ways. In some cases, *baraitot* that related to the nearby *mishnah*-pericope actually formed the earliest redacted stratum of the *sugya*. The *amoraim* studied the early *sugyot*, which were composed of *baraitot*, and commented on them. "Their *memrot* were then interpolated between the *baraitot*."[9] If this were true, it would seem that the logical progression of the *sugya* should be that the *memra* follows that *baraita*, yet in TNH *sugyot*, the order is reversed. Hauptman posits that the "probable reason for inserting the *memra* before the related *baraita* rather than after it is to indicate that the *baraita* serves as a basis for the *memra*."[10] Hauptman explains that the seemingly redundant *memra* comes to interpret the *mishnah* on the basis of the *baraita* and adds a particular aspect not found in the *baraita*. The second way in which the *baraita* may have entered the *sugya* assumes that the *baraita* does not relate to the *mishnah* but serves "as the basis of the preceding *memra* and was therefore introduced into the *sugya* along with the *memra*."[11] In both cases the essential claim is that the TNH *baraita* was not added to the *sugya* at a much later date by the anonymous redactors of the Talmud (*stammaim*), but entered it much earlier, either as part of the proto-*sugya* or by an *amora*. Regarding the cases of identical language of a TNH *baraita* and a *memra*, Hauptman believes that the language of the *baraita* was actually changed at a later date to fit the language of the *memra*.

An examination of selected TNH *sugyot*, however, raises questions about Hauptman's theory. For example, Hauptman discusses the following *sugya* at *b.Ketub.* 78 a–b:

משנה
האשה שנפלו לה נכסים עד שלא תתארס...
ר״ש חולק בין נכסים לנכסים:
נכסים הידועין לבעל לא תמכור, ואם מכרה ונתנה – בטל;
שאינן ידועין לבעל לא תמכור, ואם מכרה ונתנה – קיים.

9 Hauptman, *Development*, 94.
10 Hauptman, *Development*, 94.
11 Hauptman, *Development*, 216.

גמרא
ר״ש חולק בין נכסים:
אלו הן ידועין, ואלו הן שאינן ידועין?
אמר ר׳ יוסי ברבי חנינא: ידועין – מקרקעי, שאינן ידועין – מטלטלין;
ור׳ יוחנן אמר: אלו ואלו ידועין הן, ואלו הן שאינן ידועין – כל שיושבת כאן ונפלו לה נכסים במדינת הים.
תניא נמי הכי: אלו הן שאינן ידועין: כל שיושבת כאן ונפלו לה נכסים במדינת הים.

Mishnah
If a woman inherited property before she was betrothed . . .
R. Simeon distinguishes between two kinds of property:
Property known to the husband she may not sell, and if she sold it or gave it [away], [the sale or gift] is cancelled;
Property not known to the husband she may not sell, but if she has sold it or given it away, [the sale or gift] stands.

Gemara
R. Simeon distinguishes between two kinds of property.
Which are known and which are not known?
[The *amora*] R. Yossi bar Hanina teaches:[12] Known [properties] are real estate, unknown [properties] are movables.
And [the *amora*] R. Yoḥanan teaches: Both these and these are known. Those that are unknown are those that, while living here, she inherits abroad.
TNH: Those that are unknown are those that, while living here, she inherits abroad.[13]

If the TNH *baraita* formed the proto-*sugya* and the *memrot* were added later, then the *memrot* are reacting to or interpreting the *baraita*. The problem is that "it appears that the first amora . . . was not familiar with the TNH baraita or . . . chose to rule otherwise."[14] Hauptman concludes, on the basis of Saul Lieberman's comments, that the *tannaim* themselves were uncertain as to the definition of "known" and "unknown" and therefore "it is not so surprising that an amora disagrees with an interpretation found in a baraita."[15]

12 Friedman posits (based on Hyman Klein) that the word אמר is actually in Aramaic and in the present tense ("A Critical Study of *Yevomot X* with a Methodological Introduction," in H. Z. Dimitrovsky, ed., *Texts and Studies: Analecta Judaica* [2 vols.; New York: The Jewish Theological Seminary of America, 1977] 1:313, n. 110). It is parallel to the word אומר in tannaitic sources. In my opinion, the literal translation, "says," does not project the correct connotation, as is the case with many technical talmudic terms, therefore, I prefer to translate this term as "teaches."
13 Translation is based on Hauptman's.
14 Hauptman, *Development*, 69.
15 Hauptman, *Development*, 70.

In this *sugya* there are two *memrot*. The first question is whether the *memrot* relate to the *mishnah* or to the *baraita*. If we rearrange the *sugya* so that the *baraita* is presented first followed by the *memrot*, the *sugya* would look like this:

משנה
ר״ש חולק בין נכסים לנכסים:
נכסים הידועין לבעל לא תמכור, ואם מכרה ונתנה – בטל;
שאינן ידועין לבעל לא תמכור, ואם מכרה ונתנה – קיים.

גמרא
תניא (נמי הכי): אלו הן שאינן ידועין: כל שיושבת כאן ונפלו לה נכסים במדינת הים.
אמר ר׳ יוסי ברבי חנינא: ידועין – מקרקעי, שאינן ידועין – מטלטלין;
ור׳ יוחנן אמר: אלו ואלו ידועין הן, ואלו הן שאינן ידועין – כל שיושבת כאן ונפלו לה נכסים במדינת הים.

Mishnah
R. Simeon distinguishes between two kinds of property:
Property known to the husband, she may not sell, and if she sold it or gave it [away], [the sale or gift] is cancelled.
Property not known to the husband, she may not sell, but if she has sold it or given it away, [the sale of gift] stands.

Gemara
T(NH): Those that are unknown are those that, while living here, she inherits abroad.
[The *amora*] R. Yossi bar Hanina teaches: Known [properties] are real estate, unknown [properties] are movables.
And [the *amora*] R. Yoḥanan teaches: Both these and these are known. Those that are unknown are those that, while living here, she inherits abroad.

R. Yossi bar Hanina limits the mishnaic ruling to defining "unknown" as referring only to movables that the wife inherits, and "known" as real estate. If the *baraita* was already in the proto-*sugya*, he would also be disagreeing with it.[16] R. Yoḥanan's *memra* relates to both the previous *memra* and to the *mishnah*. By saying אלו ואלו, he is stating that what was considered by R. Yossi bar Hanina to be two different situations, is actually one and the same.[17] R. Yoḥanan then

16 Though such a situation whereby an *amora* blatantly disagrees with a *baraita* is not acceptable to the later editors of the Talmud, Hauptman would not see this assertion as a problem as she herself wrote, "it stands to reason that amoraim may have disagreed with baraitot," *Development*, 72.

17 The words אלו ואלו ידועין הן are part of his *memra* and were not added by redactors. This is proven because they are also found in the parallel *sugya* in the *Yerushalmi* (*y.Ketubot*. 32a).

directly interprets the *mishnah* as he defines the difference between "known" and "unknown" as property inherited at home and property inherited abroad. R. Yoḥanan's *memra* is a verbatim quote of the *baraita*. If the *baraita* was originally in the *sugya*, what purpose is served by R. Yoḥanan repeating it? R. Yoḥanan is not reacting to the *baraita*. Rather he quotes the *baraita* in order to interpret the *mishnah*. We see, essentially, that the two *amoraim* are interpreting the *mishnah* and not the *baraita*. Each one explains the meanings of "known" and "unknown." It seems more likely that this is the kernel of the *sugya* – both *amoraim* responding to the *mishnah*. Neither attempts to *relate* to the *baraita*.

R. Yoḥanan's *memra* is based on the *baraita* and this is problematic for Hauptman's theories. In theorizing how *baraitot* entered *sugyot*, she claims that *baraitot* that relate directly to the *mishnah* entered the *sugya* before the *memrot*, while in cases in which the *baraita* "deals with a subject totally unrelated to the mishnah . . . the baraita seems to have entered the sugya along with the memra."[18] In this *sugya*, the *baraita* directly relates to the *mishnah*, which according to Hauptman, indicates that it preceded the *memra* in the development of the *sugya*. But it has been shown that this *baraita* could not have been part of a proto-*sugya*. Additionally, while R. Yoḥanan's *memra* is based on the *baraita*, it is obvious that the *baraita* was not known to R. Yossi bar Hanina. If the *baraita* was already part of a proto-*sugya*, it would be expected that R. Yossi bar Hanina should have been familiar with it. Therefore the most reasonable explanation is that R. Yoḥanan explains the *mishnah* by quoting the *baraita*, but does not identify his source. Later editors indicated the original tannaitic identity of the source. The *baraita* was thus added to the *sugya* in the role of a *footnote* and not as an integral part of the *sugya*.

The following TNH *sugya*, at *b. Taʿan.* 22b, raises additional questions:

משנה
על כל צרה שלא תבוא על הצבור מתריעין עליהן, חוץ מרוב גשמים.

גמרא
תנו רבנן:[19] על כל צרה שלא תבוא על הצבור מתריעין עליה, חוץ מרוב גשמים.

מאי טעמא? אמר רבי יוחנן . . .
אמר רמי בר רב יוד: ובגולה מתריעין עליה.
תניא נמי הכי: שנה שגשמיה מרובין, אנשי משמר שולחין לאנשי מעמד:
תנו עיניכם באחיכם שבגולה שלא יהא בתיהם קבריהם . . .

18 Hauptman, *Development*, 84.

19 According to J. N. Epstein, *Mavo LeNosaḥ HaMishnah*, 900, תנו רבנן is sometimes used to indicate a *mishnah*-citation.

Mishnah
The alarm [*shofar*] is sounded [on the appointed fast day] on account of all catastrophes that befall the community except for an over-abundance of rain.

Gemara
Our rabbis taught (in a *baraita*): The alarm [*shofar*] is sounded [on the appointed fast day] on account of all catastrophes that befall the community except for an overabundance of rain.
What is the reason? [The *amora*] R. Yoḥanan teaches . . .
[The *amora*] Rami bar R. Yod teaches: And in the Diaspora they do sound the alarm on account of this.
TNH: In a year of excessive rain, the men of the *mishmar* send [a message] to the men of the *ma'amad*: Think of your brothers in the Diaspora, that their homes should not become their graves.[20]

The basic question to understanding this *sugya* lies in the purpose of Rami bar R. Yod's *memra*. There are two possibilities: He is explaining the *mishnah* or he is resolving the supposed contradiction between the *mishnah* and the *baraita*. Hauptman writes: "It is evident that the amora derived his qualification of the mishnah from the anecdote reported in the [TNH] baraita. Had the amora not formulated his comment, one might conclude that . . . the [TNH] baraita which follows the mishnah would appear to express an opinion in contradiction to . . . the mishnah. The memra establishes that the two tannaitic sources are in agreement, that the mishnah's rule is limited in its application to Israel and that the Diaspora is to be treated differently."[21]

A possible contradiction between the *mishnah* and the *baraita* indicates that there is a meaningful relationship between them. A coherent text is defined as the "relationship between propositions expressed through sentences."[22] The juxtaposition of two propositions in a text implies that they are meaningfully linked and that the understanding of the former proposition is dependent on the latter proposition that comes to interpret the former. A meaningful relationship between propositions (e.g., between *mishnayot, baraitot,* and *memrot*) may be covertly expressed, whereby the reader must "infer the covert propositional connection from an interpretation of the illocutionary acts,"[23] or specifically signaled by prepositional or signal phrases. Comparing the redacted *sugyot* of the *Yerushalmi* and the *Bavli* will show the difference between covertly and

20 Translation based on Hauptman, *Development*, 81.
21 Hauptman, *Development*, 82.
22 H.G. Widdowson, *Teaching Language as Communication* (Oxford: Oxford Univ. Press, 1979) 29.
23 Widdowson, *Teaching Language*, 29.

overtly expressed interlocutory acts. The *Bavli* is replete with a highly particular system of technical terminology that signals the coherent relationship between propositions. For example, in the case where a *baraita* is cited to contradict a *mishnah*, the nature of the relationship is signaled by the term ורמינהו. Thus the interpretative relationship is overtly expressed. In the *Yerushalmi*, the system of such technical terms is far less developed and, in many cases, two *baraitot* or two *memrot* may be juxtaposed with no interpretative signal term to express the relationship between them and, in many cases, with little redactional discussion.

In the present case, if the *baraita* were part of the proto-*sugya*, it would have looked like this:

> על כל צרה שלא תבוא על הצבור מתריעין עליה, חוץ מרוב גשמים.
> שנה שגשמיה מרובין, אנשי משמר שולחין לאנשי מעמד: תנו עיניכם באחיכם שבגולה שלא יהא בתיהם קבריהם.

> Our rabbis taught (in a *baraita*): The alarm [*shofar*] is sounded [on the appointed fast day] on account of all catastrophes that befall the community except for an overabundance of rain.
> In a year of excessive rain, the men of the *mishmar* send [a message] to the men of the *ma'amad*: Think of your brothers in the Diaspora, that their homes should not become their graves.

In this form (which would be similar to the style of the *Yerushalmi*) the juxtaposition of the two implies that there is a coherent relationship between the *mishnah* and the *baraita*, but it is not specified (signaled). It is up to the reader to deduce the type of relationship: whether there is a contradiction or whether the *baraita* qualifies the *mishnah*. This is why Hauptman states that one might mistakenly conclude that the *baraita* contradicts the *mishnah*.

If the *baraita* was part of the proto-*sugya*, there are two possible coherent relations between the *mishnah* and the *baraita*. If the *baraita* comes to contradict the *mishnah*, why would the resolution by the *memra* be placed before the actual contradiction by the *baraita*? If, however, the *baraita* comes to qualify the *mishnah*, then what purpose would the *memra* serve?

Another difficulty arises in that R. Rami bar R. Yod's *memra* and the *baraita* are not referring to the same actions. The *baraita* teaches that Jews in the *Land of Israel* should be concerned for the welfare of Jews abroad. R. Rami bar R. Yod teaches that the Jews in the *Diaspora* should sound a warning. R. Rami bar R. Yod is adding a new element – not just that the Jews in the Diaspora are adversely affected by rain, but that they themselves should sound the alarm.

While we can only speculate as to the editing/redaction process, it seems

more likely that if both *baraitot* comprised the proto-*sugya*, then the later editor would have indicated the seemingly contradictory relation between them, as such:

> תנו רבנן: על כל צרה שלא תבוא על הצבור מתריעין עליה, חוץ מרוב גשמים.
> ורמינהו: שנה שגשמיה מרובין, אנשי משמר שולחין לאנשי מעמד: תנו
> עיניכם באחיכם שבגולה שלא יהא בתיהם קבריהם!
> אמר רמי בר רב יוד: ובגולה מתריעין עליה.

> Our rabbis taught (in a *baraita*): The alarm [*shofar*] is sounded [on the appointed fast day] on account of all catastrophes that befall the community except for an overabundance of rain.
> A contradiction is brought from a *baraita*: In a year of excessive rain, the men of the *mishmar* send [a message] to the men of the *ma'amad*: Think of your brothers in the Diaspora, that their homes should not become their graves.
> [The *amora*] Rami bar R. Yod teaches: And in the Diaspora they do sound the alarm on account of this.

In this order, there is a coherent relationship between the *mishnah* and the *memra* whereby the *memra* is brought to explain that the *halakhah* is different regarding Jews living abroad. Since the redactor chose to indicate a coherent relationship between the *mishnah* and the *memra*, and not between the *mishnah* and the *baraita*, this could indicate that the TNH *baraita* was not part of the proto-*sugya*.

As Hauptman posited, the *amora* derived his terse *memra* on the basis of the TNH *baraita*. The question is whether he did so because the *baraita* was already in the *sugya* or because he was familiar with the *baraita*. While we cannot determine this definitively, the fact that the later redactor did not signal a contradiction between the *mishnah* and the *baraita* tends to tilt the scales towards the idea that the TNH *baraita* did not enter the *sugya* before or together with the *memra*. Additionally, this *memra* is preceded by a *memra* attributed to a contemporary of R. Rami bar R. Yod, R. Yoḥanan. R. Yoḥanan's *memra* is certainly directly related to the *mishnah*. This is additional circumstantial evidence that R. Rami bar R. Yod's *memra* was also in response to the *mishnah*. Therefore it seems far more plausible that the earliest stratum of the *sugya* consisted of the *mishnah* and the two *memrot*. R. Rami bar R. Yod interpreted the *mishnah*, perhaps as per the TNH *baraita* that he knew, and if so, without citing the source. At a later stage in the *sugya*'s redaction, the TNH *baraita* was added as a footnote.

In a few instances, the TNH *sugya* is followed by an alternative arrangement in which the TNH *baraita* is placed *before* the *memra*. For example, in *Sukkah* 16a, a TNH *sugya* is recorded twice.[24] The first time is in the usual order of a quote from a *mishnah*, a *memra* and a TNH *baraita*. The *mishnah* states that carving out a space among a pile of sheaves does not make a *sukkah* (but according to the TNH *baraita*, it would constitute a *sukkah*). The *memra* of Rav Huna defines the circumstances under which such a *sukkah* would be valid.

משנה
החוטט בגדיש לעשות לו סוכה – אינה סוכה.

גמרא
החוטט בגדיש:
אמר רב הונא: לא שנו אלא שאין שם חלל טפח במשך שבעה, אבל יש שם
חלל טפח במשך שבעה – הרי זה סוכה.
תניא נמי הכי: החוטט בגדיש לעשות לו סוכה – הרי זה סוכה.
והאנן תנן: אינה סוכה!
אלא לאו שמע מינה כדרב הונא, שמע מינה.

איכא דרמי ליה מירמא:
תנן: החוטט בגדיש לעשות לו סוכה אינה סוכה,
והא תניא: הרי זו סוכה!
אמר רב הונא: לא קשיא; כאן – בשיש שם חלל טפח במשך שבעה,
כאן – בשאין שם חלל טפח במשך שבעה.

Mishnah
If one hollows out a haystack to make for himself a *sukkah*, it is not a valid *sukkah*.

Gemara
If one hollows out a haystack:
[The *amora*] R. Huna teaches: This [*mishnah*] was taught only where there is not a hollow space of one handbreadth [in height] extending to seven [handbreadths square], but if there is a hollow space of one handbreadth extending to seven, it is valid.
TNH: If one hollows out a haystack to make for himself a *sukkah*, it is a valid *sukkah*.
But is it not taught (in the *mishnah*): It is not a [valid] *sukkah*?!
Rather we conclude that the *halakhah* does not follow [the opinion of] R. Huna.

Some put it in the form of a contradiction:
We have learned in the *mishnah*: If one hollows out a haystack to make

24 See also *b.Roš Haš.* 27b, *b.ᶜArak.* 27a, *b.B.Bat.* 11a, and *b.Sukkah* 32a.

for himself a *sukkah*, it is not a valid *sukkah*.
But is it not taught in a *baraita*: It is a valid *sukkah*?!
[The *amora*] Rav Huna teaches: There is no difficulty; The latter refers to where there is a hollow space of a handbreadth extending to seven while the former refers to where there is not a hollow space of a handbreadth extending to seven.

Epstein claims that the alternate rendition – *mishnah*, *baraita* (contradiction), *memra* (resolution) – represents how the *sugya* was learned in different *yeshivot*.[25] According to E. Z. Melamed, the infrequently used term איכא דרמי ליה מירמא introduces an alternative formulation of the *sugya* in order to show that there is a contradiction between a *mishnah* and a *baraita* that can be resolved by a *memra*.[26] The regular order of TNH *sugyot* (*mishnah*, *memra*, *baraita*) implies that the coherent relation is between the *mishnah* and the *memra*. The alternate version raises the possibility that the coherent relation could actually be between the *mishnah* and the *baraita*. The question is that if in these few cases an alternate ordering of the *sugya* (or reverting to the more original form as per Hauptman) was presented, why wasn't this method used more often? The fact that in the vast majority of TNH *sugyot* the *mishnah* and the *memra* are juxtaposed and that an alternative ordering is not offered could likely indicate that the nucleus of such *sugyot* was indeed the relationship between the *mishnah* and the *memra*, and was not based on a proto-*sugya* comprised of the *mishnah* and the *baraita*. This idea has been demonstrated in some of the above examples whereby reordering the *sugyot* by placing the two tannaitic sources together did not produce a more comprehensible *sugya* and in some cases, produced illogical results.

The above examples have shown that there is no proof that the TNH *baraitot* entered the *sugyot* at a very early date. The *sugya* in *Ketubbot* showed the difficulty in suggesting that the *baraita* preceded the *memra* into the *sugya*. In the *sugya* in *Ta*ᶜ*anit*, the decision of the redactor to create a coherent relationship between the *mishnah* and the *memra*, and not between the *mishnah* and the TNH *baraita*, would indicate that the TNH was a later addition. Finally, from the *sugya* in *Sukkah*, we learn that in a few cases an alternative rearrangement was suggested for TNH *sugyot*. Such rearrangements in many TNH *sugyot*, however, would produce illogical results.

We do see quite clearly that *amoraim* would base their *memrot* on *baraitot*. In Tractate *Ketubbot*, R. Yoḥanan quotes a *baraita* (verbatim according to the

25 Epstein, *Mavo LeNosaḥ HaMishnah*, 159.
26 E. Z. Melamed, *Eshnav HaTalmud* (Jerusalem: Kiryat Sepher Ltd, 1966) 50. See Rashi, on *b.Roš Haš.* 27b.

text of the *Bavli*) in order to explain the *mishnah* and contradict R. Yossi. R. Yoḥanan is obviously aware that he is quoting earlier tannaitic material (*baraita*), but since he does not cite the source or identify it as tannaitic, this led to an erroneous conclusion that he did not know the *baraita*. There is no support to contend that the *baraita* preceded R. Yoḥanan's *memra* in the formulation of the *sugya*.

I would suggest, regarding TNH *sugyot*, that the original *sugya* was not composed of the TNH *baraita*, but rather that the *memra* is its core element. At a later time the later redactor(s) footnoted similar or parallel *baraitot*. Furthermore, as I. H. Weiss posited, such *baraitot* served no dialectic purpose. They did not come to support or strengthen the opinion of the *amora* since essentially the *memra* was based on the *baraita*.[27]

J. Frenkel's Explanation

Jonah Frenkel proposes that TNH *baraitot* were actually fuller tannaitic teachings that predated the redacted version of the Mishnah. Commenting on *b.Beṣah* 31a, Frenkel compares a TNH *baraita* with the associated *mishnah*-pericope. Among the differences between them were that the *baraita* provides a reason for the *halakhah* while the *mishnah* does not, and that the *baraita* refers to סואר של קורות (a pile of beams) while the *mishnah* only mentions קורות (beams). Frenkel posits that the formulator of the Mishnah assumed that those who would study it would already know that the explanation of the word סואר did not refer to all types of beams but only to those that were not prepared before the holiday (סואר של קורות).[28]

מנשה
אין מבקעין עצים,
לא מן הקורות ולא מן הקורה שנשברה ביום טוב.
ואין מבקעין לא בקרדום ולא במגרה ולא במגל אלא בקופיץ.

גמרא
והאמרת רישא "אין מבקעין" כלל!
אמר רב יהודה אמר שמואל חסורי מחסרא והכי קתני:
אין מבקעין מן הסואר של קורות,
ולא מן הקורה שנשברה ביום טוב,
אבל מבקעין מן הקורה שנשברה מערב יום טוב.
וכשהן מבקעין, אין מבקעין לא בקרדום ולא במגל ולא במגרה אלא בקופיץ.
תניא נמי הכי: אין מבקעין עצים
לא מן הסואר של קורות ולא מן הקורה שנשברה ביום טוב, לפי שאינו מן המוכן.

27 I. H. Weiss, *Dor Dor veDorshav* (4 vols.; Berlin: Platt and Minkus, 1924) 2:243.
28 Frenkel, "Methodologies," 123.

> *Mishnah*
> One may not chop firewood,
> neither from beams nor from a beam that was broken
> on the Festival.
> And one may not chop either with an ax or with a saw or with
> a sickle, but only with a hatchet.
>
> *Gemara*
> But it is taught in the first clause "one may not chop" at all!
> [The *amora*] Rav Judah teaches in the name of Samuel: There is
> a lacuna (in the *mishnah*) and this is what was taught:
> One may not chop from a pile of beams,
> and not from a beam that was broken on the Festival,
> But one may chop (firewood) from a beam that was broken on the eve
> of the Festival.
> And when chopping, one may not chop with an ax or with a saw or
> with a sickle, but only with a hatchet.
> *TNH:* One may not chop firewood,
> Neither from a pile of beams nor from a beam that was broken on
> the Festival, since it was not among the things designated (before the
> Festival).

There is an internal contradiction in the *mishnah*. The beginning states unequivocally that it is not permitted to chop wood on a Festival. The latter section stipulates which tools may not be used to chop wood; thereby implying that chopping by other methods on the Festival is permitted. In the *sugya*, Samuel settles the contradiction by establishing that the latter part is dealing with the eve of the Festival. He does so by claiming that the text of the *mishnah* is deficient.[29] Samuel's *memra* is almost identical to the TNH *baraita* later cited. One difference is that the *baraita* provides the reasoning for the prohibition on the Festival (שאינו מן המוכן) while Samuel explains the situation (שנשברה מערב יום טוב) described in the latter part of the *mishnah*. There is no essential difference. Frenkel asks:

> From where did Samuel know this explanation? There are two basic possibilities: either the explanation is his own opinion, or he received it in one of the ways in which the transmission of the oral law reached him. On the first possibility it should be asked: How is it possible that Samuel

29 Epstein, *Mavo LeNosaḥ HaMishnah*, 159, maintains that also in *sugyot* where an *amora* claims that there is a lacuna in the Mishnah, the TNH *baraita* is brought by the "Talmud" as support for the *memra*.

> himself would explain the *mishnah* exactly in terms of the language of the *baraita* without being aware of the *baraita*? This question centers on the uncommon term סואר, and it is not likely that Samuel would have come up with (this term) on his own. If we consider the second possibility and state that Samuel was familiar with the *baraita*, we must ask why he did not cite it himself and why the *sugya*'s editor phrased his words so as to give the false impression that Samuel's explanation is supported and substantiated by the *baraita* but that Samuel himself did not know it. It is clear that this question is relevant to all TNH *sugyot* in the Talmud.[30]

Frenkel goes on to explain that the transmitted language of the *mishnah* was deliberately "incomplete" and that its explanation could be found in the "Talmud of Rabbi Judah the Patriarch." Samuel knew that the explanation was based on the "missing" parts of the *mishnah* and he received the explanation as a tradition together with the *mishnah*.

Frenkel suggests two possible explanations of the historical relationship between the *mishnah* and the *baraita*. First, the *baraita* was actually an earlier and fuller version of the *mishnah* that also included the explanation. Rabbi Judah removed the explanatory portions of the teaching, thus forming the *mishnah*, but at the same time transmitted the explanation together with the *mishnah*. The original version, now known as the *baraita*, only reached Babylonia at a later period. The second possibility is that the *mishnah* predates the *baraita*. Rabbi Judah formulated the *mishnah* and also provided explanations. The text and the explanations were transmitted to the *amoraim*. At the same time, the last *tannaim* joined the text of the *mishnah* and its explanations into a "*baraita*," but Samuel did not know this *baraita*.[31]

Frenkel concludes that the text of the Mishnah was derived from an earlier and fuller teaching (*baraita*) and that Rabbi Judah deliberately removed the explanatory portions. The *amoraim* knew the explanations, but were not aware of the existence of the earlier *baraitot*, and thus taught the explanation without citing the *baraitot*.[32] In this case, Samuel was aware of the "talmudic" explanation, but was not familiar with the *baraita*.[33]

While I agree with Frenkel that the text of the Mishnah postdates the text of many *baraitot*,[34] I do not accept his explanation for the independent exis-

30 Frenkel, "Methodologies," 124.

31 Frenkel, "Methodologies," 125.

32 Frenkel, "Methodologies," 141.

33 It is important to note the difference between Frenkel and Hauptman. Hauptman contends that the *amoraim* realized that they were quoting *baraitot*. Frenkel contends that the *amoraim* were not aware that they were actually quoting *baraitot*.

34 While many traditional commentators and modern Talmud scholars view the *halakhot* of the

tence of the "Talmud of Rabbi Judah" and nearly identical *baraitot*. It is not likely that two versions co-existed with the exact or very similar wording. Frenkel's hypothesis could be more applicable regarding the appearance of *baraitot* in the *Yerushalmi*. In the cases of the usage of terms parallel to TNH (מתינתא מסייעא ליה, ותני כן), the text of the cited *baraita* is almost never identical or even close to the language of the *memra*. In these cases, the existence of sources with similar content but worded differently could allow one to claim that there existed parallel tannaitic teachings (*baraita*) alongside the "Talmud of Rabbi Judah." Frenkel, however, based his conclusions solely on the *Bavli*.

Another point to be considered is the usage of the phrase הסואר של קורות. Shamma Friedman's research on tannaitic literature is sensitive to the usage of uncommon words.[35] In this case, the phrase הסואר של קורות only appears twice in tannaitic literature and five times in the *Bavli* (three times used by an *amora*, twice quoted as part of a *baraita*). If Samuel did not know the *baraita*, why would he use such an uncommon term? If his point was to explain the latter part of the *mishnah*, why would he need to change the language and include this phrase? Its introduction does not change the understanding of the *mishnah*. Obviously he must have been familiar with the *baraita*. He based his *memra* on the *baraita*, which included the phrase הסואר של קורות in order to explain the *mishnah*.

The basic problem with Frenkel's theory is that there are too many examples of the TNH phenomenon involving the early generation of *amoraim*. If Rabbi Judah edited and abridged the earlier *baraitot*, then the *amoraim* of the first and second generations, some of who studied with Rabbi Judah himself (e.g., Rav), should have been familiar with the fuller texts (i.e., the *baraitot*). For example, there are 43 cases in which a TNH *baraita* follows a *memra* of either Rav or Samuel, who were the leading first-generation *amoraim* in Babylonia, and 41 cases involving R. Yoḥanan, who was the leading second-generation *amora* in Palestine. In two-thirds of the cases, the *memrot* attributed to these *amoraim* are the same or very similar to the language of the subsequent *baraita*.[36] Rav and Samuel began their studies during the period of the redaction of the Mishnah of Rabbi Judah the Patriarch. Even R. Yoḥanan studied briefly with Rabbi Judah (*b.Ḥull.* 137b).[37] Rav, as a student of Rabbi Judah, certainly

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Tosefta as a response to, or clarification of the Mishnah, S. Friedman posits that much of the material found in the extant Tosefta predates the Mishnah of Rabbi Judah, and in fact, was the basis for the Mishnah. See Shamma Friedman, "The Primacy of Tosefta to Mishnah in Synoptic Parallels," in Harry Fox, ed., *Introducing Tosefta* (New York: Ktav Publishing House, Inc., 1999) 99–121.

35 See, for example, Friedman's latest publication, *Tosefta Atiqta* (Ramat Gan: Bar-Ilan Univ. Press, 2002).

36 Rav: 13/20 (65%), Samuel: 16/23 (70%), Rabbi Yoḥanan: 28/41 (68%).

37 See Epstein, *Mavo LeNosaḥ HaMishnah*, 239.

was exposed to the vast collection of tannaitic teachings. R. Yoḥanan studied under R. Oshaya, who is credited, along with R. Ḥiyya, with collecting *baraitot* while under the tutelage of Rabbi Judah.[38] If according to Frenkel and others, Rabbi Judah edited the *mishnayot* and abridged them from *baraitot*, then the scholars of the first generation, some of whom studied with Rabbi Judah, should have been familiar with them. They studied in the period of transition before the inclusion of only a small portion of tannaitic teachings into the Mishnah to the exclusion of the vaster number of other teachings, which became known as *baraitot*. Rav and Samuel even had their own collections of *baraitot*.[39] Therefore we should assume that the early *amoraim* knew these *baraitot*. When explaining a *mishnah*, they would often quote from *baraitot*.

Such a conclusion is similar to Avraham Weiss' position. Weiss claimed that the *amoraim* used earlier tannaitic material without citing the original source.[40] In the intensive learning environment of the *yeshivot* all previous teachings were studied to such a degree that they were considered the common property of all students. *Amoraim* freely quoted from *baraitot* without identifying the sources as tannaitic and their teachings, which often included portions of *baraitot*, were transmitted as *memrot* in the name of the *amoraim*.[41] Since the *baraitot* were widely known, there was no need to identify the source as a *baraita*. When later *amoraim* came across the original tannaitic material, they added the source to the *sugya* alongside the *memra*.[42] Similarly, Rashbam commented that *amoraim* would quote *baraitot* without identifying their origin and the "*gemara*" would later add the *baraita* "to teach us that what was cited in the name of an *amora* is actually a *baraita*, since not everyone was familiar with all *baraitot*."[43]

Parallel Usage of *Baraitot*

The juxtaposition of *baraitot* following *memrot* is not limited to the TNH *baraitot* in the *Bavli* and also occurs quite frequently in the *Yerushalmi*.

38 See *b.Taᶜan.* 21a.

39 Epstein, *Mevo'ot LeSifrut HaTannaim* (Jerusalem: Magnus Press, 1957) 253.

40 Avraham Weiss, *LeḤeqer HaTalmud* (New York: Feldheim, 1956) 50, 59. See also Epstein, *Mevo'ot LeSifrut HaTannaim*, 255.

41 For example, in the following *sugya* in the *Yerushalmi* the question is raised if a transmitted teaching was amoraic or tannaitic in origin (*y.Beṣah* 63b):

> תמן אמרין בשם רב חסדא, ולא ידעין אין מן שמועה ואין מן מתנית׳:
>
> There [in Babylonia] they taught [this teaching] in the name of Rav Hisda and they didn't know if it was an amoraic teaching or from a *baraita*.

This query, however, is not very common in the Talmud.

42 Weiss, *LeḤeqer HaTalmud*, 59–62.

43 On *b.Pesaḥ.* 101b.

A study of the roles of *baraitot* introduced by terms such as ותני כן ,וכן תנא and מתניתא מסייעא will enable us to suggest certain conclusions about the usage of TNH *baraitot*.

וכן תנא[44]

Of initial interest is the usage of the term וכן תנא ("and thus it was taught in a *baraita*"), which occurs over sixty times in the *Bavli*. The initial difference between this usage and that of TNH is that in half of its cases, the source is quoted simultaneously as both a *memra* and a *baraita*.[45] For example, in *b.Sanh.* 85b:

> אמר רבה בר רב הונא וכן תנא דבי רבי ישמעאל: לכל אין הבן
> נעשה שליח לאביו...

> [The *amora*] Rabba bar Rav Huna teaches, and a *tanna* of the school of R. Ishmael *also* [*taught*]: For no offence may a son be appointed his father's representative...

The second important difference is that, while the TNH *baraitot* are cited anonymously, here all of the *baraitot* are brought in the name of Rabbis or their schools (e.g., דבי חזקיה, דבי רבי ישמעאל). Most of the Rabbis mentioned are in fact early *amoraim*. More exactly, this seems to be a method of referring to collections of *baraitot* compiled by *amoraim*. For example several *baraitot* are cited as being found in the collection of the *baraitot* of Levi (וכן תני לוי במתניתיה), who was a first-generation *amora*, or brought by R. Ḥiyya or Bar Kappara, both of whom were known for their collections of *baraitot*. The existence of compilations of *baraitot* by early *amoraim* stands in contrast to Frenkel's opinion that the *amoraim* were not aware of similar sources when they formulated their *memrot*.

In the following two examples, *b.Soṭah* 49b and *b.Yoma* 24a, of which there are many more, the *memra* and the *baraita* are both cited in the name of the *same amora*:

> אמר רב: לא שנו אלא של מלח וגפרית, אבל של הדס ושל וורד – מותר,
> ושמואל אומר: אף של הדס ושל וורד – אסור; של קנים ושל חילת – מותר.
> ולוי אמר: אף של קנים ושל חילת – אסור.
> וכן תני לוי במתניתיה: אף של קנים ושל חילת – אסור.

> [The *amora*] Rav teaches: The decree [against the use of a crown] only applies to one [made of] salt and brimstone, but if made of myrtle or

44 In some cases the term is וכן תני.

45 It is interesting to note that almost all of the cases of a single source occur when the *baraita* is cited as having been taught in a particular school (e.g., וכן תנא דבי ישמעאל).

> roses, it is permitted. And [the *amora*] Samuel teaches: Also one made of myrtle or roses is prohibited, but if made of reeds or rushes, it is permitted.
>
> And [the *amora*] Levi teaches: Even one made of reeds or rushes is prohibited.
>
> And thus Levi *teaches in his baraita*: Even one made of reeds or rushes is prohibited.

> אמר רב: ארבע עבודות זר חייב עליהן מיתה: זריקה, והקטרה, וניסוך המים, וניסוך היין.
> ולוי אמר: אף תרומת הדשן.
> וכן תני לוי במתניתיה: אף תרומת הדשן.

> [The *amora*] Rav teaches: There are four services for which a non-priest incurs the death penalty: sprinkling, smoking, the water libation, and the wine libation.
>
> And [the *amora*] Levi teaches: Also the removal of ashes.
>
> And thus Levi *teaches in his baraita*: Also the removal of ashes.

The languages of both the *baraita* and the *memra* are completely identical. It is impossible to conclude that Levi, when he formulated his teaching, did not know that the exact same teaching existed in his very own personal collection of *baraitot*! We see, therefore, that *amoraim* freely quoted earlier (tannaitic) sources. In cases such as this, even though the *amora* was actually quoting a *baraita*, the teaching at some point became considered to be a *memra* and was thus transmitted in the *sugya* (ולוי אמר). The *sugya*'s later redactor, while not questioning the teaching's "amoraic" origin, made note that the same teaching was also found in a collection of *baraitot*. This later notation gave the mis-impression that the *amora* was not familiar with the *baraita*, an assertion that in this case is illogical.

ותני כן

There are some significant differences in the usage of the TNH *baraita* in the *Bavli* and parallel terms in the *Yerushalmi*. The term ותני כן ("and thus it was taught in a *baraita*") occurs over 200 times in the *Yerushalmi*. The following instance exemplifies a basic difference in the relationship between the *memra* and the *baraita* in the *Bavli* and *Yerushalmi sugyot*; *y.Ber*. 4a:

> בר קפרא אמר אין לך צריך כוונה אלא ג׳ פסוקים הראשונים בלבד.
> ותני כן ושננתם עד כאן לכוונה מיכן ואילך לשינון.

[The *amora*] Bar Kappara teaches: It is sufficient to apply one's attention to the first three verses [of the Shema paragraph].

And it is *also taught in a Baraita*: "And you shall inculcate them" – until this point one's attention must be applied, after which the simple reading is sufficient.[46]

The *memra* of Bar Kappara states that when reciting the Shema, one only needs to recite the first three verses with attention (*kavvana*). While the following *baraita* relays the same content as the *memra*, the wording itself is not similar. In the *Bavli*, as Hauptman has shown, in over 80% of the cases the language of the *memra* and TNH *baraita* are exactly or nearly verbatim. In the *Yerushalmi, this rarely occurs.* In the above example, the topical content is identical, but neither the language nor the sentence structure are similar. From here we can conclude that the *amora* did not quote from the *baraita* (as in a TNH *sugya*), but that the *baraita* was later added to the *sugya* in order to support the authority of the *amora*'s statement.[47]

The significant compositional difference between the *memra* and the *baraita* makes it difficult to determine if the *amora* actually knew the *baraita*. It has already been pointed out that TNH *baraitot* in the *Bavli* which are verbatim to the preceding *memra* pose a difficulty in determining whether the *baraita* was cited at a later time (to give support to the *memra*), or (in accordance with Hauptman) formed the earlier *sugya* (to which the *memra* was later added). In the *Yerushalmi*, however, and unlike many TNH *baraitot*, the language of the *baraita* is almost *never* verbatim identical to that of the *memra*.[48] Thus it is likely that the *amoraim* produced independent *memrot* that they used to explain *mishnayot*. The later redactor(s) of the *Yerushalmi* inserted *baraitot* that they felt *corroborated* the *memrot*.[49] In these cases it seems quite obvious that the *baraita* was inserted into the *sugya* at a later time as tannaitic support for the *memra*. In a few cases, however, if the *memra* attributed to a particular *amora* was

46 Translation based on Moses Schwab, *The Talmud of Jerusalem* (London: Williams and Norgate, 1886) 30.

47 Compare this to Epstein who claimed that some *memrot* in the *Bavli* are paraphrases of *baraitot*. See *Mavo LeNosaḥ HaMishnah*, 293 and *Mevo'ot LeSifrut HaTannaim*, 254.

48 Among the 200-some examples of ותני כן in the *Yerushalmi*, there are a handful in which only one source is brought and introduced first as a *memra* followed by the term ותני כן, as in: אמר רבי יוחנן ותני כן. More than half of them are *memrot* quoted in the name of R. Yoḥanan and usually the other *memrot* are quoted in the name of third-generation *amoraim* who, like R. Yoḥanan, were also from Tiberias. Again, given the fact that R. Yoḥanan was the leading scholar of the generation and that the other *amoraim* studied with him, it is more unlikely that they would author statements that were verbatim quotes of *baraitot* without being aware of the origin of these statements.

49 Sometimes the *amoraim* themselves mentioned that a *baraita* could have been cited to explain the matter under discussion instead of a *memra*. For example, *y.ᶜAvod. Zar.* 41a:

actually a *baraita*, the redactor(s) maintained its attribution as a teaching made by an *amora*, but also noted its original origin as a *baraita*, as in the following example, *y.Ketub.* 25b:

> אמר רבי יוחנן ותני כן: חרש שנשא פיקחת אין לה עליו מזונות ולא כתובה...
>
> [The *amora*] R. Yoḥanan teaches and it was *also taught as a baraita*: [In the case of] a deaf man who marries a hearing woman, she is not entitled to alimony or to the *ketubah* ...

It appears quite obvious that in the ותני כן *sugyot*, the *memrot* preceded the insertion of *baraitot* into the *sugya*. *Baraitot* were cited as footnotes to corroborate the *memra*. If this was the style of the *Yerushalmi*, it is most likely that the Bavli used a similar style.

We also see from here that *baraitot* cited (verbatim) by *amoraim* were attributed to the *amora* and identified as *memrot*. Similarly, Epstein wrote that *amoraim*, such as R. Eleazar, Rav, Samuel and R. Yoḥanan, used to quote *baraitot* without citing the source, as if these were their own words.[50] At a later point in the development of the *sugya*, the tannaitic origin of the teaching was also noted.

מתניתא מסייעה

The *Yerushalmi* term מתניתא מסייעה, "the *baraita* supports the *amora*'s opinion," parallels the term תניא כוותיה that is used in the *Bavli*. As in the case of TNH, תניא כוותיה also relates to a preceding *memra*. Hauptman believes that, as with TNH, תניא כוותיה also was "not added to support or challenge the preceding memra, as the literal meaning of the term suggests, but was included in the sugya even before the memra was added or was added along with the memra."[51] However, analyzing the usage of מתניתא מסייעא will show that the *baraita* was a later addition and relates to the *memra*.

There are a number of usages of the *baraitot* introduced by the term מתניתא

> רבי הילא עם ר׳ בון בר כהנא אמר ליה אילולא דאתון רחמין שמועתא ולא מתניתא היא תני רבי חייה...
>
> R. Illa [met] with R. Bun bar Kahana. He said to him: Were it not that you prefer the teachings [of *amoraim*, you might have cited a tannaitic tradition], for is this not a tannaitic tradition? R. Ḥiyya taught a *baraita* ...

50 Epstein, *Mavo LeNosaḥ HaMishnah*, 292–93. See also S. Friedman, *Talmud Arukh*, 205, s.v. *perushim*.

51 Hauptman, *Development*, 216.

מסייעא. In most cases, the *sugya* is composed of a disagreement between *amoraim*. Sometimes the *baraita* is brought to support the opinion of the first *amora*, sometimes to support the second *amora*, and sometimes two *baraitot* are brought as support for each *amora*; *y.Meg.* 75c–d:

תפילה ומזוזה מי קודם?
שמואל אמ׳ מזוזה קודמ׳;
רב חונה אמר תפילה קודמת.
מה טעמיה דשמואל שכן היא נוהגת בימים טובים ובשבתות
מה טעמא דרב חונה שכן היא נוהגת במפרשי ימים והולכי מדברות
מתניתא מסייעה לשמואל:
תפילה שבלת עושין אותה מזוזה, מזוזה שבלת אין עושין אותה תפילין. למה?
שמעלין בקודש ולא מורידין.

Which has precedence – *Tefillin* or *mezuzah*?
[The *amora*] Samuel teaches: *Mezuzah* has precedence.
[The *amora*] R. Huna teaches: *Tefillin* have precedence.
What is Samuel's reason? It [*mezuzah*] is [also] observed on Festivals and Sabbaths.
What is R. Huna's reason? It [*tefillin*] is [also] observed by sea voyagers and by desert wayfarers.
There is a baraita that supports Samuel's position:
Tefillin that have worn out can be used to make a *mezuzah*. A *mezuzah* that has worn out cannot be used to make *tefillin*. Why? We promote to a higher grade of sanctity, but do not degrade.

The argument between the *amoraim* relates to a poor person who can only afford *tefillin* or *mezuzah*, but not both – which should he purchase? Samuel teaches that the *mezuzah* takes precedence, while Rav Huna posits that one should first obtain *tefillin*. No answer (amoraic or redactional) is provided to settle the disagreement. This is the function of the *baraita*. The *baraita* refers to worn-out parchment in *tefillin* and *mezuzah*-parchment. The *baraita* teaches that it is permissible to use the worn-out parchment from *tefillin* for use as parchment in a *mezuzah*, but not the reverse. The conclusion is that the *mezuzah* is considered holier than the *tefillin*. If the *baraita*, and not the *memrot*, was part of the original *sugya*, what were its other components? The *baraita* has no relevance to the *mishnah* (אין מפטירין במרכבה) nor to any part of the subsequent *sugyot*, which discuss where to place a *mezuzah*. Therefore, the main component of the *sugya* is the disagreement between Samuel and Rav Huna. To this disagreement was added the redactional question: תפילה ומזוזה מי קודם?. The *baraita*, while not directly related to the issue at hand, provides an answer by

teaching that the *mezuzah* is holier than the *tefillin*. We see that the מתניתא מסייעא *baraita* comes in response to the *memra*.

In the redacted TNH *sugyot* of the *Bavli*, the *baraita* is never cited in the name of an *amora*.[52] This is not so in the *Yerushalmi*, as is demonstrated in the following example, *y.Mak.* 31b:

כתב כל נכסיו לשני בני אדם כאחת, היו העדים כשירין לזה ופסולין לזה...
רבי יוחנן אמר מאחר שהן פסולין לזה פסולין לזה
רבי שמעון בן לקיש אמר כשירין לזה ופסולין לזה
אמר רבי לעזר מתניתא מסייעה לר׳ יוחנן: מה השנים נמצא אחד מהן קרוב או פסול עדותן בטילה אף השלשה נמצא אחד מהן קרוב או פסול עדותן בטילה.

[In the case of] one who consigned all of his assets to two people at the same time, and there were witnesses that were qualified for the one and disqualified for the other...
[The *amora*] R. Yoḥanan teaches that since they are disqualified for the one, they are disqualified for the other.
[The *amora*] R. Shimon ben Lakish teaches that they are qualified for the one and disqualified for the other.
[The *amora*] R. Lazar teaches: *There is a baraita that supports* R. Yoḥanan: As in the case of two witnesses – if one is found to be a relative or disqualified, the testimony is invalidated, so it is with three witnesses – if one is found to be a relative or disqualified, the testimony is invalidated.

The major difference here is that the *baraita*, stylistically, is not cited anonymously by the redactors; rather, it is brought in the name of an *amora*.[53] In most of the over twenty such cases, the *amora* is either from the third or fourth generation. There are even eight instances in which an *amora* quotes a *mishnah*.[54] In none of these cases is any indication given by the *amora* to hint that he is actually citing a tannaitic source, even when quoting a *mishnah*. Therefore it is likely to assume that *amoraim* would quote *baraitot* verbatim without signaling the source's tannaitic origin.[55] Without the term מתניתא מסייעה, we would not necessarily know that the teaching was actually a *baraita*. R. Lazar's

52 Hauptman claims that in some cases *memrot* and *baraitot* entered *sugyot* together. This would imply that the *amoraim* cited these *baraitot*.

53 The term מתניתא מסייעה, like most technical terms, was a late addition to the *sugya* and was not said by R. Lazar.

54 *B.Ber.* 7c; *b.Ber.* 10a (= *b.Pesaḥ.* 29c); *b.Šabb.* 14b; *b.Qidd.* 63d; *b.Ketub.* 25b; *b.Ketub.* 34c; *b.Giṭ.* 50b; *b.B.Qam.* 3a. Additionally, six of the *baraitot* are found in the Tosefta and five in the halakhic *midrashim*.

55 In most cases, the *amora* is from the third or fourth generation. Also, many of the sources introduced by the term מתניתא מסייעה are found in the Tosefta and the Mishnah.

statement would have been construed as a *memra* and one could have mistakenly concluded that R. Lazar was not aware of the *baraita*.

In the following examples, in *y.Pesaḥ.* 29c and *m.Pesaḥ.* 2:6, we learn another important point:

אמר רבי שמואל בר רב יצחק מתניתא מסייעה לרבי בנימן בר יפת:
אבל לא כבושין ולא שלוקין ולא מבושלין.

[The *amora*] R. Samuel bar R. Yitzhak teaches: *There is a baraita that supports* R. Benjamin bar Yefet:
But not if they are pickled, stewed, or boiled.

ואלו ירקות שאדם יוצא בהן ידי חובתו בפסח: בחזרת ובעולשין ובתמכא ובחרחבינה ובמרור יוצאין בהן בין לחין בין יבשין אבל לא כבושין ולא שלוקין ולא מבושלין . . .

And these are the vegetables with which a person fulfills his obligation of [eating bitter herbs] on Passover: with lettuce, with endives, with chervil, with snakeroot and with horseradish. They fulfill their obligation with them whether they are moist or dry, but not if they are pickled, stewed, or boiled . . .

The *amora* R. Samuel bar R. Yitzhak brings a tannaitic source to support R. Benjamin bar Yefet. As we can see, the source is a brief phase from the Mishnah. We see that the style of the *amora* was to quote only the *relevant portion* of the Mishnah. While some may hold that we cannot expect *amoraim* to know all the *baraitot*,[56] one could not make the same claim that the *amora* was unaware that the source he was quoting was actually from a *mishnah*.[57] Therefore we see that even though the *entire source* was known, only a *small portion* of the *mishnah* was actually quoted. This is most likely similar to some TNH *sugyot*, in which a short amoraic *memra* is followed by a much longer *baraita* that includes the language of the *memra*. Therefore we can conclude that often the *amoraim* would quote only the relevant portion of a *baraita*. This did not mean that they were unaware of the *baraita*, but rather the opposite – they knew the *baraita* but saw fit to quote only the relevant portion, not the entire ruling! Therefore, there is no basis to the assertion (as per Frenkel) that the *amoraim* did not know that they were quoting from *baraitot*. By only partially quoting the *baraita*, the impression is given that the *amora* did not know the *baraita*, otherwise he would have either quoted it in its entirety or cited his

56 See Frenkel, "Methodologies," 124, n. 11, and Hauptman, *Development*, 6, n. 18.

57 Epstein makes this claim, but doesn't cite any references to prove this point. See *Mevo'ot LeSifrut HaTannaim*, 251.

source. The TNH term itself was meant to be used as a footnote, citing the *baraita* as a point of reference, i.e., so that students should know that there was a *baraita*, an additional tannaitic teaching, upon which the *amora* based his explanation.

Summary

In light of the above discussion, it is possible to draw the following conclusions concerning TNH *sugyot*:

In the TNH *sugyot*, the *baraitot* did not comprise the proto-*sugyot* as suggested by Hauptman, nor were they brought into them by *amoraim* together with the *memrot*, but were added to the *sugyot* at a later time.

In many cases in the *Bavli* the *memrot* of early *amoraim* are identical or very similar to *baraitot*. It is very unlikely that the *amoraim* were familiar with these teachings but did not recognize them as *baraitot*, as Frenkel has proposed.

Amoraim were indeed very familiar with the vast tannaitic literature (*baraitot*) and freely quoted from it. Their knowledge was far more comprehensive than has been assumed by some traditional and modern scholars.

The *amoraim*, when basing their *memrot* on a *baraita* (or even a *mishnah*), did not cite or identify the source. Thus it occurred that *baraitot* quoted by *amoraim* became associated with them and identified as *memrot*.

In some instances when an *amora* based his *memra* on a *baraita*, he only quoted the relevant section and not the entire *baraita*. This led to the false impression that the *amora* was not familiar with the *baraita*.

Later redactor(s) of the *Bavli* added the TNH *baraitot* to the *sugya* following the *memra*. They may have added them to inform later students who were not well versed in *baraitot* that the *memra* was actually a *baraita* or based on a *baraita* (as in Rashbam's explanation), or they may have wished to note that there was also a parallel *baraita*. In other cases, *baraitot* expressing similar content were cited to corroborate *memrot*.

Comparing the purposes of *baraitot* that were introduced by various but similar technical terms (in both the *Bavli* and the *Yerushalmi*) confirms the above conclusions.

The later addition of *baraitot* in TNH *sugyot* served no dialectical purpose and did not contribute to the thematic content. In essence, such insertions only served the role of a footnote.

The Story of a Giant Story

The Winding Way of Og King of Bashan in the Jewish Haggadic Tradition

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Og, the king of Bashan, is depicted in the Bible, the midrash in the Tannaitic period and by Josephus as a giant of realistic dimensions. In the Amoraic exegeses he became a figure of monstrous proportions, possibly under the influence of views that appear in the Apocrypha. One "expansion" of his image was already delivered in the name of palestinian Amoraim, but it is linked to the dimension of time. This "stretching" could also have sparked the fertile midrashic imagination for the physical stretching of his body. In a later addition, Og became Eliezer, Abraham's servant.

In the Middle Ages Og "returns" to his human dimensions, and the commentators, both the rationalists and those who engaged in esoteric interpretations, struggled to explain these exaggerated expositions as allegory. The exegesis in the Zohar and in the commentary by Rashba continue to expand the interpretive direction that presents Og as possessing spiritual merits.

In the hands of the aggadic commentators in recent centuries, this direction split into two interpretive options, that share their portrayal of Og and Moses as occupying two sharply opposing poles: some refused to accept that this "wicked one" had any spiritual merits. Others sought to relate the story of Og and the story of his war with Moses as a battle between two completely righteous individuals, with the sole decisive advantage held by Moses in this struggle as being from Israel, the people that had been chosen by God.

There are instances in which a story that was related somewhere and sometime as a singular event becomes the linchpin that connects early generations with later times. In these cases the story that is transmitted in such a manner in the tradition from one generation to another functions as a sort of "frame" for several narrative materials from which each generation selects to weave its own narrative, the story that suits it in terms of the conditions under which this generation grew, its spirit, and its culture. The following is an example of such a story: the narrative of Og king of Bashan in the Jewish tradition.

We are accustomed to distinguish between the storytellers, the haggadists themselves, and the commentators, whose learned comments are meant to clarify, explain, and resolve problems that arise from a reading of the haggadic text. This article, in contrast, will seek to present the interpretive process itself

as that of a retelling of the haggadic text. We will attempt to show how each commentator, even if he presents his motives as purely hermeneutical, is none other than a narrator; a reteller, who, with his distinctive narrative method, imprints the narrative with the unique seal of the time and place in which his new version was "composed."

The major part of the following survey examines the chronological "expansion" or "reduction" of the character of Og in this tradition, with the aim, so to speak, of presenting the story of the storytellers themselves. Or, perhaps, in other words: to set forth the Jewish commentary on the *haggadah* as a certain way of retelling, in accordance with the cultural context of the storyteller at any place and any time along the historical continuum.

As we shall see below, in each generation the character of Og has been painted in the special colors of these commentators-storytellers, who almost never let him simply be Og, the giant presented by the biblical narrator as the rival of Israel in the war for the conquest of Bashan. Rather they added to and embellished him with all manner of strange descriptions. They altered his character with whatever variants they pleased, and ascribed to him and his family various sorts of powers, to the extent that from a synoptic perspective it seems on occasion that as time passed the story of Og itself became no less monstrous and imaginary than the expansion of the specific character of Og into the gigantic dimensions it occupies in several of the fantastic versions of the story.

On Giants in the Jewish Haggadic Tradition

Before beginning a specific discussion of the Og legend, it would be worthwhile to cast a quick glance at the biblical narrative traditions that are concerned with gigantic characters in general. The earliest of such narratives, that presents the "Nephilim" as the sons of God who descended to earth and took wives from the daughters of men, who bore them offspring (Gen 6:1–4), is perhaps the source of all the *haggadot* of the Nephilim and Anakites in the Bible.[1] This is undoubtedly a story of mythic origin, with many similar legends prevalent in world mythology of the coupling of different species, between gods and men, sometimes resulting in the birth of demigods, who are capable of challenging man's finite destiny. In the Bible, this narrative underwent a process of demythologization, for the Bible emphasizes that "My breath shall not abide in man

1 See below, n. 32, for an expansion of this issue (see also n. 49, below); see also the comment by Jacob Licht, *A Commentary on the Book of Numbers [XI–XXI]* (Jerusalem: Magnes, 1991) 67, on the "Nephilim the offspring of the Anakites" (Heb.) and see: Devorah Dimant, '*The Fallen Angels' in the Dead Sea Scrolls and in the Apocryphal and Pseudepigraphic Books Related to them* (Thesis; Jerusalem: The Hebrew Univ., 1974) 10 n. 24.

forever, since he too is flesh; let the days allowed him be one hundred and twenty years" (v. 3). This myth, in its biblical adaptation, demonstrates that in this early phase such hero stories were already part of the repertoire of the Hebrew popular narrative tradition.[2]

The name *Anak* is interpreted in Josh 14:15 as if it were the first name of the founder of Kiriath-arba, "that is Hebron,"[3] and this name was later given to people whose sons were large in size and who dwelled especially in Hebron and its surroundings.[4] The Israelites first encounter these Anakites in the narrative of the spies, in Numbers 13, which relates that these giants instilled the spies with fear. It is related that Joshua son of Jephunneh dispossessed three Anakites named Ahiman, Sheshai, and Talmai (Josh 14:12–14; Judg 1:20).[5] It is stated of Joshua in general fashion that he forced the Anakites out of the hills of the western Land of Israel and the vicinity of Hebron, and consequently "no Anakites remained in the land of the Israelites; but some remained in Gaza, Gath, and Ashdod" (Josh 11:22). This comment provides an opening for the Anakite stories that occupy a prominent place as a central narrative in the book of Judges, since this text alludes to Goliath and his brothers the descendants of the Raphah, the giants[6] with whom the Israelites were forced to contend.[7]

It has been suggested, from the literary aspect, that the narrative of David's battle with Goliath has its origins in a popular Hebrew story, in the common format of the popular epic of the youngest son who goes forth to save his brothers, struggles against a monstrous giant, kills him, and later wins the princess, overcoming the many obstacles that stand in his way to the conquest of the kingdom. Some add that this story was originally told about an unknown hero and was later transferred by popular storytellers to the more famous character of King David.[8]

Rabbinic haggadic literature made use of these motifs, at times transforming the heroes of the Bible into giant-like creatures of imaginary power and arrogant

2 See Eli Yassif, *The Hebrew Folktale: History, Genre, Meaning* (Bloomington: Indiana Univ. Press, 1999) 10–11.

3 See Shmuel Ahituv, "*Anak, Anok, Anakim*," *Enziklopedyah Mikra'it* (*Encyclopaedia Biblica*) (9 vols.; Jerusalem: Mosad Bialik, 1972) vol. 6 cols. 312–13 (Heb.); Trent C. Butler, *Joshua*, WBC 7 (Waco, Texas: Word Books, 1983) 159, 174.

4 Num 13:28, 33; see Josh 11:21.

5 An action also ascribed to Joshua. See below; Ahituv, "*Anak, Anok, Anakim.*"

6 It was said of Goliath that his height was "six cubits and a [hand]span tall" (1 Sam 17:4).

7 See Butler, *Joshua*, 130, who also mentions Samson and his bravery within the context of the special treatment of the "Anakites" by the book of Judges.

8 This is supported by the version in 2 Sam 21:19 and in 1 Chr 20:5, that relates that Elhanan son of Jaare killed the Philistine giant; see Yassif, *The Hebrew Folktale*, 22; see also Yassif, 64–65, for the hypothesis that this story was originally a magical tale.

behavior, similar to the biblical Samson or the Hercules of Greek mythology.[9] Thus, for example, the *haggadah* attributed such characteristics to individuals such as Joab son of Zeruiah, David's military commander.[10] It should, however, be stressed that the great strength of such characters, even if the narrative is of popular origin and makes use of magic means, is eventually subordinated, already in the biblical narrative – and certainly in the rabbinic *haggadot* – to the Divine force that directs the world in accordance with the Lord's plans.[11] Prominent in the background of both the biblical narrative of David and Goliath and the narrative of Moses' war with Og, following the *haggadah* set forth below, is the presence of a supportive God, a fact that is eventually decisive, unlike the widespread literary format in non-Jewish legends of the clumsy and malicious giant who is bested by the cunning and valor of the hero.[12] An additional difference between the giant tales in world literature and the *haggadot* of giants in the rabbinic literature is that the latter lacks the widespread motif of giants who cause geological upheavals, and whose very existence constitutes a perilous danger to the physical existence of the world.[13]

The common element seemingly shared by the various giant tales, including those in the Jewish tradition, is that in all the versions the struggle with the giants demands of the hero who battles with them a degree of spiritual elevation and psychological strength.[14] As we shall see (below), Moses also was required to contend with the fears that assaulted him before his war with Og.

9 For folkloristic stories related to giants in general, see the classification by Stith Thompson, *Motif Index of Folk-Literature* (Copenhagen – Bloomington: Rosenkilde and Bagger – Indiana Univ. Press, 1959) chaps. G100–G199. See also Shmuel Krauss, "Heroes and Giants in Israel, in the Aggadah and in Folklore," in Menahem Ribalow, ed., *Sefer ha-Shanah li-Yehudei Amerikah* (The Year Book of American Jews) (New York: Histadrut ha-Ivrit be-Amerikah, 1949) 279–300 (Heb.).

10 Yassif, *The Hebrew Folktale*, 85. We found an haggadic tradition relating to Joab son of Zeruiah, that he seized Abner and bound him with a "coil of threads" (*Yalkut Shimoni*, Jeremiah 285), and by *kefitzat ha-derekh* (the miraculous shortening of the way) he traveled a tremendous distance (*Bereshit Rabbah* 59:11 [J(udah) Theodor and Chanokh Albeck, eds., *Midrash Bereshit Rabba* (Jerusalem: Wahrmann, 1965) 68]; b.Sanhedrin 95a); see also Louis Ginzberg, *The Legends of the Jews* (7 vols.; Philadelphia: Jewish Publication Society, 1913) 4:100–101.

11 The Bible also takes care to transmit this message, when it teaches us that none of the Anakites could stand up to the Israelites, for it is the Lord who crosses before them (see Deut 9:1–2); see Ahituv, "*Anak, Anok, Anakim*," 312.

12 For the giant legends in world literature and the common motif of the hero who defeats them with cunning and courage, see Hans Biedermann, *Dictionary of Symbolism, Cultural Icons and the Meanings behind Them*, James Hulbert, trans. (New York: Facts on File, 1994) 152. A well-known example of this in Greek mythology is the killing of Cyclops Polyphemus by Odysseus.

13 See the summary by Biedermann, 151. In the early American legends, threatening giants are usually depicted as also devouring humans; see Maria Leach, ed., *Funk & Wagnalls Standard Dictionary of Folklore Mythology and Legend* (New York: Funk & Wagnalls, 1972) 453–54.

14 See Jean Chevalier and Alain Gheerbrant, *Dictionary of Symbols*, John Buchanan-Brown, trans. (Middlesex: Penguin, 1996) 431.

At times even the most highly esteemed characters, such as the Patriarchs of the nation, for example, are described in the Jewish *haggadah* in a grotesquely dramatized fashion, as a type of giant who is wont to speak boastfully and engage in vociferous curses. Thus, for example, the nature of the dispute between Judah and Joseph is presented in such a light.[15] In such instances, the *haggadah* turned the extended biblical narrative into a folktale, that envelops the nucleus of the biblical narrative with a humorous atmosphere that results from the crude behavior of the heroes together with the fear of threatening and monstrous creatures.[16] If the *haggadah* occasionally acts in such a manner with positive heroes, it obviously can be expected to afford similar treatment to the negative characters in the Bible.

This short introduction sheds some light on the background of the fantastic literary development that transformed Og, in some of his metamorphoses in the sources, from a lofty man of impressive dimensions to the threatening monster of the *haggadah* (see below).

The Biblical Og

The first biblical mention of the Israelite victory over Og king of Bashan consists of a short report that appears in Num 21:33–35:

> They marched on and went up the road to Bashan, and Og king of Bashan, with all his people, came out to Edrei to engage them in battle. But the Lord said to Moses, "Do not fear him, for I give him and all his people and his land into your hand. You shall do to him as you did to Sihon king of the Amorites who dwelt in Heshbon." They defeated him and his sons and all his people, until no remnant was left him; and they took possession of his country.

Additional details concerning this war are to be found in Deuteronomy, in the speech by Moses (3:1–13):

> We made our way up the road toward Bashan, and Og king of Bashan with all his men took the field against us at Edrei. But the Lord said to

15 See *Bereshit Rabbah* 93:6 (Theodor and Albeck, eds., 1157–58); Ginzberg, *Legends of the Jews* (1913) 2:103–10.

16 See Yassif, *The Hebrew Folktale*, 85. For the folk beliefs connected with giants, see Yassif, 481 n. 16. Yassif also suggests that heroic stories of contemporary figures could not develop after the destruction of the Temple and the failure of the Bar Kokhba rebellion, when the Jewish people lacked any military force, and the natural need by the public for such tales turned the imagination of the popular storytellers to the distant biblical heroes; see Yassif, 85.

> me: Do not fear him, for I am delivering him and all his men and his country into your power, and you will do to him as you did to Sihon king of the Amorites, who lived in Heshbon. So the Lord our God also delivered into our power Og king of Bashan, with all his men, and we dealt them such a blow that no survivor was left. At that time we captured all his towns; there was not a town that we did not take from them: sixty towns, the whole district of Argob, the kingdom of Og in Bashan – all these towns were fortified with high walls, gates, and bars – apart from a great number of unwalled towns. We doomed them as we had done in the case of Sihon king of Heshbon; we doomed every town – men, women, and children – and retained as booty all the cattle and the spoil of the towns. [. . .] Only Og king of Bashan was left of the remaining Rephaim. His bedstead, an iron bedstead, is now in Rabbah of the Ammonites; it is nine cubits long and four cubits wide, by a man's forearm. [. . .] all that part of Bashan which is called Rephaim country. Jair son of Manasseh received the whole Argob district (that is, Bashan) as far as the boundary of the Geshurites and the Maacathites, and named it after himself, Havvoth-jair – as is still the case.

This victory over Og by Moses' troops is briefly mentioned once again in Deut 4:47: "They had taken possession of his [Sihon's] country and that of Og king of Bashan – the two kings of the Amorites who were on the east side of the Jordan."

Three tokens of Og's exceptional size remain in the biblical tradition. The first: according to the verse in Deut 3:47, Og was an Amorite,[17] and in other passages in the Bible the lineage of the Amorites is traced to the Rephaim, an ancient people of giants (the early meaning of the name *Refaim* is apparently "heroes").[18] The Amorites themselves also are depicted in the Bible as being tall

17 In contrast to this, however, he is also mentioned as the non-Amorite king of Bashan (Num 21:33, and more). For this see Chaim Rabin, "Og," *Eretz-Israel* 8 (1967) 251 (Heb.). For the conjectures concerning the purpose of the biblical narrative in attributing Og to the Amorites and to the Anakites the descendants of the Rephaim, as an attempt to thereby denigrate the tainted origin of these peoples, from the flawed coupling with the sons of God, see Baruch J. Schwartz, *The Holiness Legislation* (Jerusalem: Magnes, 1999) 157–58; also see below, n. 32.

18 Samuel E. Loewenstamm, "*Refaim*," *Enziklopedyah Mikra'it*, vol. 7, cols. 404–6 (Heb.). See also Rabin, "Og," 252 n. 24, who proposes understanding the meaning of this word as "the tall ones." Also see Shemaryahu Talmon, "Rephaim in the Bible and rpu/i/(m) in the Literature of Ugarit," *Beit Mikra* 30 (100) (1985) 16–27 (Heb.). Goliath the Philistine also was considered to be a descendant of the Rephaim (1 Chr 20:4–8; 2 Sam 21:19–20). For "Rephaim" in the traditional commentary, see the summation of Yehudah Nahshoni, *Hagut be-Parshiyot ha-Torah* (Studies in the Portions of the Torah) (2 vols.; Benei Berak: Sifriyati, 1986) 2:722–24 (Heb.).

and stout (Amos 2:9: "whose stature was like the cedar's and who was stout as the oak").[19]

The second: between the lines of the biblical portrayal we understand that Moses was apprehensive of the encounter with Og, and God had to encourage him with heartening promises, in a pattern that recurs both in Numbers and in Deuteronomy: "Do not fear, for I am delivering him into your hands."[20]

The third such indicator appears in the references in other biblical sources that incidentally stress the degree to which the importance of this war was impressed in the consciousness of later generations. It appears from these references that this victory (like the triumph over the army of Sihon) was inscribed in the consciousness of the later generations as a special, and even unique event (Josh 2:10; 9:10; 12:4; 13:12, 30–31; 1 Kgs 4:19 ff.; Neh 9:22; Ps 135:11–12; 136:20).

Og's singular size, however, that instilled fear in Moses and the Israelites, is not perceived in the Bible itself in mythical terms, but rather as being totally realistic. As we have seen, Deut 3:11 uses an intriguing "archaeological" report to describe his height, claiming that "only Og king of Bashan was left of the remaining Rephaim. His bedstead [*arso*], an iron bedstead,[21] is now in Rabbah of the Ammonites; it is nine cubits long and four cubits wide, by a man's forearm." This report is to be understood literally: Og was about twice as tall as a normal person, and that is all.

The Character of Og in the Tannaitic Literature

A study of the material that survived in the tannaitic *midrashim* also shows the lack of any evidence that in that period, in the Land of Israel *midrashim* that

19 *Jubilees* 29:9 (O. S. Wintermate, trans., in James H. Charlesworth, ed., *The Old Testament Pseudepigrapha* [Garden City, New York: Doubleday, 1985] 111) even relates of the Rephaim that their height "was ten cubits, nine cubits, eight cubits, or down to seven cubits."

20 For the close similarity between the versions in Numbers and Deuteronomy, see Alexander Rofe, *Introduction to the Composition of the Pentateuch* (Jerusalem: Academon, 1994) 99–100 (Heb.), and his conclusion, following a painstaking comparison, that the narrative in Deuteronomy precedes that in Numbers; see also Licht, *Book of Numbers*, 211–12.

21 The traditional commentaries understood that in most instances, *eres* has the meaning of "bed" (although Rabbi Samuel ben Meir is of the opinion that this is the "cradle" of Og, that had remained there from when he was an infant! This idea was also raised in *She'eilot u-Teshuvot ha-Rama mi-Pano*, par. 3. Another view, however, maintains that *eres* means "fortress"; see Hizzekuni to Deut 3:11; Rabbi Isaac ben Judah Halevi, *Pa'ane'ah Raza* (*Sefer Paneach Ruzu*) [Warsaw: Alter, 1931] to Deut 3:11, 394). Among the modern scholars who sought to view *eres* as a basalt dolmen tomb, see Rabin, "Og," 251. For such dolmens, see Yehudah Ziv, "An Echo of the Ancient Ones in Nahal Gamla," *Eretz ha-Golan* 14 (1979) 14–17 (Heb.); see also Allan Millard, "King Og's Bed and Other Ancient Ironmongery," in Lyle Eslinger and Glen Taylor, eds., *Ascribe to the Lord – Biblical and Other Studies in Memory of Peter C. Craigie*, *JSOT Supp.* 67 (Sheffield:

were composed until the end of the third century, Og was perceived solely as a giant of completely realistic dimensions. One tannaitic tradition (*Sifrei*, Num. 101 [Hayyim S. Horovitz, ed., *Siphre de'be Rab* (Leipzig: n.p., 1917) p. 99]) also, in my opinion, clearly demonstrates that this exegete believed that Moses was even taller than Og:

> "Now Moses was a very modest man" [Num 12:3] – modest in his mind. You ask: modest in his mind, or modest in his body? Scripture teaches: "You shall do to him as you did to Sihon king of the Amorites" [Num 21:34]. He [Moses] bent over (ירד) upon Sihon and killed him, he [Moses] bent over (ירד) upon Og and killed him.

According to this tannaitic *midrash*, Moses was of humble disposition, although his body was in no way humble, since his physical size and great strength enabled him to "descend" upon Sihon and Og and kill them.[22] This is also indicated by Josephus' description of Og:[23]

> Og himself had a stature and beauty such as few could boast; he was withal a man of a doughty arm, so that his exploits were on a par with his superior gifts of height and a handsome presence. Of his strength and stature they had evidence on capturing his bedstead in Rabatha, the capital of the Ammonite country: this was constructed of iron and was four cubits broad and double as much, with a cubit over, in length.[24]

The Character of Og in the Amoraic Literature

Two branches that are concerned with the character of Og can be identified in the amoraic traditions. One tradition, that also appears in *midrashim* by

JSOT Press, 1988) 481–92; Millard, "King Og's Bed – Fact or Fancy?" *Bible Review* 6/2 (1990) 16–21, 44.

22 The reference to Og in the Tosefta (*Šabb.* 17:19, Saul Lieberman, ed., *Seder Moed* [New York: Jewish Theological Seminary, 1962] p. 84) as well indicates that the *tannaim* who maintain this do not recognize Og as a creature of monstrous proportions, since he is cited there as a simple example of a large person (cf. what is said regarding Og in *b.ᶜErub.* 31a; 48a).

23 *Ant.* 4:98, H. St. J. Thackeray, trans. (*LCL*, 1930) 525. Philo does not mention Og at all, see Feldman's assumptions about that: Louis H. Feldman, "The Portrayal of Sihon and Og in Philo, Pseudo-Philo and Josephus," *JJS* 53 (2002) 267.

24 Rabin, "Og," 251 n. 6 questions this: Why did the Israelites need this bedstead, "for they could have seen his body when he fell in battle." If, however, we explain that the "they" in Josephus "who had evidence" refers to those who lived in later times, Josephus' statement poses no difficulty. It should be noted, however, regarding the biblical text itself, that this wording provides a proof against the traditional conception of Mosaic authorship, that at least this part of the book of Deuteronomy was not written in the time of Moses, for in that period there was no need to bring an "archaeological" proof for Og's dimensions. It is plausible, therefore, that this

palestinian *amoraim*,[25] "lengthens" Og, not necessarily in terms of his physical size, but as regards his outstanding longevity.

This tradition places Og in an early period, and connects him with the primeval Rephaim who are mentioned in Gen 14:5, in the context of Abraham's war with the kings, for even the verse in Deut 3:11 asserts that Og "was left of the remaining Rephaim." The time connection in this tradition seeks to be even more precise, and identifies the precise time when Og appears in the biblical narrative in Genesis. Since the exegete maintains that Og is "the fugitive [*ha-palit*]"[26] mentioned in Gen 14:13, who came to tell Abraham that his nephew Lot had been taken captive by Amraphel and his allies ("A fugitive brought the news to Abraham the Hebrew . . ."), the time frame is even more precisely defined, and patently occurred on Pesah. Why? Because the exegete associatively connects his name, "Og," with the "cakes [*ugot*]"[27] that, as he understands it, in a second associative leap, Abraham had Sarai bake as the *matzot* of Pesah (the "unleavened cakes" of Ex 12:39):

> "A fugitive brought the news . . ." – R. Simeon ben Lakish, in the name of Bar Kappara: This is Og, and why was he named Og? For he came and found Abraham sitting and engaged with unleavened cakes. He did not have pure intentions, but rather said, "This Abraham is jealous. Now I say to him that Lot has been taken captive, he will go forth to war and be killed, and I will take Sarai." The Holy One, blessed be He, said to him: Your life, the reward for the steps that you take [to Abraham] is that you will live long in the world. And for your thought to kill the righteous one, you will see a thousand thousands of his descendants, and it will be your end to fall to the hands of his descendants, [as it is said,] "But the Lord said to Moses, 'Do not fear him, for I give him [. . .] into your hand'" [Num 21:34].[28]

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was written in a later period, by those who never saw the "other Rephaim." See Rofe, *Composition of the Pentateuch*, 12. For the Islamic adaption of this talmudic haggadic tradition, see Moshe Sokolow, "Goliath and Og in Midrash and Hadith," *Sefunot* 16 (1980) 55 (Heb.).

25 The *midrash* from *Bereshit Rabbah* cited below is by Resh Lakish in the name of Bar Kappara, a Land of Israel sage (the son of the Tanna Rabbi Eleazer ha-Kappar) who lived in the transitional period between the time of the tannaim and that of the *amoraim*.

26 Although the definite article *heh* in the Bible itself usually is indicative of previously mentioned matters or people, the Rabbis frequently regarded it as an allusion to what the Bible would later relate. See Yitzhak (Isaac) Heinemann, *Darkhei ha-Aggadah* (The Methodology of the *Haggadah*) (Jerusalem: Magnes Press, 1954) 117 (Heb.). For the linkage between different characters in the midrashic literature, see Jacob Elbaum, "Rhetoric, Motif and Subject-Matter – Toward an Analysis of Narrative Technique in Pirke de-Rabbi Eliezer," *Jerusalem Studies in Jewish Folklore* 13–14 (1991–1992) 121–22 and n. 49 (Heb.); see also 120–21 and nn. 47–48 for the midrashic linkage between events mentioned in the Bible.

27 For the etymology of the name "Og," see Rabin, "Og," 251–54; for the Hebrew *ugah*, see Rabin, n. 27.

28 *Bereshit Rabbah* 41(42):13 (Theodor and Albeck, eds., pp. 413–14). It should be noted regarding

This *midrash* also incidentally ties a hidden cunning plot to the announcement by the "fugitive." The exegete assumes that Og had designs on the beautiful Sarai, and therefore is interested in inciting Abraham to go forth to war, so that he will be killed, thus enabling Og to marry the new widow.

Thus this Land of Israel *haggadah* fashions an intriguing literary structure: according to this *midrash*, the "fugitive" (*palit*) wants to turn Sarai into a "*peleitah*" [i.e., a "remnant" from Abraham's possessions] like himself, so that he can take her for himself! The "fugitive" therefore plots to take advantage of Abraham's innocence and moral integrity in order to win the latter's wife; accordingly, the "fugitive" himself is the "jealous one," and not Abraham, who sets forth to rescue Lot.

Continuing this exegetical line, a *baraita* in *b.Nid.* (61a) presents, in the name of R. Johanan, a midrash[29] that identifies our "fugitive" with an earlier period; according to this, Og was the sole survivor of all the generation that perished in the Flood.[30]

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the extant version that Saul Lieberman (ed.) assumed, in the edition of *Devarim Rabbah* based on MS Oxford 147 ([Jerusalem: Wharman Books, 1950] 32 n. 1), that the *midrashim* disagree on the question of whether Og's telling Abraham about the captivity of Lot was for altruistic purposes or not. I, however, am not convinced of the correctness of Lieberman's assumption, because the silence of several midrashic sources does not mean that they do not rely on that ancient idea, that Og did this in order to win Sarai.

29 This exposition concerning Og, as well, came from the circle of Tiberian sages composed of Rabbi Johanan and his pupils (see above, n. 25, and below, nn. 31, 32; it should be noted that the discussion in *b.Zebaḥ.* 113b [see n. 30, below] incidentally indicates that the discussants were aware of the *haggadah* of Og being a refugee from the Flood generation, and the discussion there centers around the dicta of Rabbi Johanan and Resh Lekish from Tiberias). For this circle and the place occupied by the study of *haggadah* in it, see Wilhelm Bacher, *Die Agada der palaestinensischen Amoraer* (3 vols.; Strassburg: Truebner, 1892) 1:vii–18, esp. 17–18. An additional comment by Rabbi Johanan (*b.Nid.* 61a), "From the answer that was given to that righteous man, you may understand what was in his mind," is attributed to Rabbi Simeon bar Yohai (fourth generation Tanna), but we possess no other tangible tannaitic testimony for such an early tradition besides this attribution in the Babylonian Talmud; see n. 37, below. *Devarim Rabbah*, Lieberman, ed., *Devarim*, par. 29 (pp. 31–32) also ascribes the two traditions concerned with Og to Rabbi Simeon ben Lakish; it should be stressed, however, that we do not see from the two that Og was perceived as a figure of nonrealistic physical size (the second tradition, that maintains that "Og king of Bashan was disfigured" is only of the opinion that his physical dimensions were not proportional).

30 See Pseudo-Jonathan to Gen 14:13: "Then came Og, who had escaped from among the giants who died in the Flood" (Michael Maher, trans., *Targum Pseudo-Jonathan: Genesis* [Edinburgh: T. & T. Clark, 1992], and Avigdor Shinan, *The Embroidered Targum: The Haggadah in Targum Pseudo-Jonathan of the Pentateuch* [Jerusalem: Magnes, 1992] [Heb.] nn. 32, 34, below). The term *Palit*, "the fugitive" that in a certain phase was applied to Og may have been responsible for the associative birth of the exegesis in Pseudo-Jonathan in regard to Og, since we have found the term *peletah* used in reference to the survivors of the Flood. Thus, for example, *Bereshit Rabbah* 38 (Theodor and Albeck, eds., p. 355) states: "rather, the Flood generation were

This position, that is first presented in Babylonia, albeit in the name of a Land of Israel sage, seems in my opinion to be a turning point in the history of the exegeses of the character of Og, since the presentation of this exegetical direction created an opening for future exegetes to view Og as a character of monstrous proportions. There is a simple reason for this: if we regard Og to be a fugitive who survived from the Flood generation, then it is plausible that it was his height (the only characteristic of his of which we know from the written sources) that saved him. If this was the case, then his height had to be completely imaginary, since he had to be taller than the highest mountains, that were covered by water during the Flood (Gen 7:20–21).[31]

In another Babylonian Talmud passage we can identify a *haggadah* that also could constitute a basis for this exegetical turning point (see below) that enlarged Og to gargantuan dimensions. The discussion in *b.Nid.* 61a contains a tradition that Sihon and Og were the sons of Ahijah son of Shamhazai.[32]

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totally immersed in robbery [. . .] and therefore no remnant [*peleitah*] was left of them"; and similarly in other sources. This is connected to the attributional statement in *b.Nid.* 61a: "This is Og, who escaped the fate [*she-palat*] of the Flood generation." According to those engaged in the discussion in *b.Zebaḥ.* 113a–b, the Amoraim of the Land of Israel disagreed as to how Og was saved: Resh Lakish was of the opinion that Og was tied to the Ark and was thereby saved (see the following note), while, according to Rabbi Johanan, Og survived because he stayed in the Land of Israel, that was unscathed by the Flood.

31 It should be emphasized, counter to this, that from the systematic, fundamental aspect, this assumption does not necessarily require our stating that Og was an imaginary giant. Thus, for example, *Pirkei de-Rabbi Eliezer*, chap. 23 asserts that Og was saved because he "sat down on a rung of (one of) the ladders of the ark. He swore to Noah and to his sons that he would be their servant for ever. What did Noah do? He bored an aperture in the ark, and he put (through it) his food daily for him" (Gerald Friedlander trans., *Pirke de Rabbi Eliezer* [New York: Hermon Press, 1965] 167). But see Rashi to *b.Zebaḥ.* 113b, q.v. "*Nes*" ("Because of his height he did not drown like the *re᾿em* [wild-ox]"; for the boiling waters of the Flood mentioned there, see Shinan, *The Embroidered Targum,* 141); Rabbi David Luria, in his commentary on *Pirkei de-Rabbi Eliezer* (Warsaw: Bamberg Press, 1852) 113b, par. 29; Ginzberg, *Legends of the Jews* (1925) 5:181 n. 35: that according to many other midrashic versions, Og was saved by his height; some went so far as to say that the water only came up to his ankle! Thus, too, in the Islamic legendary tradition; see Sokolow, "Goliath and 'Og,'" 53.

It should be realized that we cannot offer any source that states that, according to Palestinian Amoraim from the circle of Rabbi Johanan, Og is explicitly depicted as monstrous; we have shown in clear fashion only his longevity, and his being from the generation of Abraham, or even that of the Flood. It is noteworthy, however, that one midrashic source (*Midrash Tehillim* 136:12) preserves such an opinion, in the name of Rabbi Johanan, although it is difficult to determine if it is reliable on this point. *Midrash Tehillim* 136:12 (see also *Devarim Rabbah* 1:29) states that, according to Rabbi Johanan, Og's legs alone extended a length of eighteen cubits.

32 For the identification of Sihon and Og as brothers and the problem created by this identification, see *Tosafot Nid.* 61a, q.v. "*Zeh Og.*"

As regards the background of this tradition concerning the lineage of Og: we already commented above, at the beginning of the article, regarding the statement in Gen 6:4: "It was then,

The Talmud explains that even though Sihon was a giant like Og, Moses did not fear him, because his physical size did not daunt Moses; however, Moses did fear Og possibly because "the merit of our father Abraham will stand for him" and protect him (the intent being to the good deed that was to his merit, namely, according to the above *midrash*, his being the "fugitive" who informed Abraham of the captivity of Lot).

At this phase of our discussion we can address the primary sources that quite clearly portray Og as a monster of fantastic size, these are Babylonian amoraic sources. Thus, *b.Ber.* 54b depicts the encounter between Og and the Children of Israel:[33]

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and later too, that the Nephilim appeared on earth – when the sons of God cohabited with the daughters of men, who bore them offspring. They were the heroes of old, the men of renown." Various haggadic tales were woven around this mysterious verse (see above, at n. 1). The names Shamhazai and Azael appear in *1 Enoch* 6:7. For Shamhazai in the traditional sources, see Rashi on Num 13:33, who presents this tradition, according to which "Anakites, who were the descendants of Shamhazai and Azael, who fell from Heaven in the generation of Enosh"; see *Yalkut Shimoni* on the Torah, Genesis, par. 44, that these angels were corrupted with the daughters of men who were beautiful; see also Ginzberg, *Legends of the Jews* (1913) 1:124, and notes. This midrashic development as well might possibly tend to assume that Og was an imaginary creature. *1 Enoch* 7:2 states that those women bore these angels "great giants whose heights were three hundred cubits" (E. Isaac, trans., in Charlesworth, *Old Testament Pseudepigrapha*, 16). Incidentally, it was even further related that this Shamhazai engaged in illicit relations with the wife of Ham, and she became pregnant from this liaison. In order to conceal this, Ham had to engage in relations with his wife in the Ark, so that it would be thought that he was the father of the child; see Ginzberg, *Legends of the Jews* (1925) 5:183 n. 54. For the licentious behavior of these angels, and their illegitimate children, see also *Zohar, Midrash ha-Neʾelam, Vayere* 117b–118a, and see below, n. 49, for the identification of Nimrod with the Nephilim, and see also Ephraim E. Urbach, *The Sages*, Israel Abrams, trans. (Jerusalem: Magnes, 1975) 177 and the discussion of Dimant, *Fallen Angels*, pp. 175–182.

It therefore could cautiously be proposed that the amoraic *haggadot* treating Og as a mythical giant have their beginnings in an external, inward-directed penetration, into the *beit midrash* (study hall), of haggadic material that originated in apocryphal works that related that Og was a descendant of the angels who had relations with the daughters of men. For the traditions that entered the rabbinic literature in a later period and that have their basis in the Apocrypha, see the comment by Menahem Kister, *Studies in Avot de-Rabbi Nathan: Text, Redaction and Interpretation* (Jerusalem: Hebrew Univ. – Yad Izhak Ben-Zvi, 1998) 177 n. 301 (Heb.). Following what I wrote above, n. 29, this could also be connected with what is known to us from other sources that the Tiberian *beit midrash* of Rabbi Johanan had a certain knowledge of the views to be found in the Apocrypha. See Menachem Elon, *Jewish Law: History, Sources, Principles* (Philadelphia – Jerusalem: Jewish Publication Society, 1994) 1033–35. For a possible connection between those haggadic sources and the Manichaean *Book of Giants* (a group of Aramaic fragments from Qumran also referred to by the researchers as the "Book of Giants") see John C. Reeves, "Giants, Book of," in Lawrence H. Schiffman and James C. Vanderkam, eds., *Encyclopedia of the Dead Sea Scrolls* (2 vols.; Oxford: Oxford Univ. Press, 2000) 1:309–11.

33 This is the interpretation of the *baraita* cited in *b.Ber.* 54a. It should be stressed, however, that it has no parallel in the tannaitic literature, as it has come down to us, nor in the Palestinian Talmud.

> He [Og] asked: How large is the camp of Israel? Three parasangs. I will uproot a mountain the size of three parasangs and I will cast it upon them and kill them. He went and uprooted a mountain the size of three parasangs and placed it on his head. But the Holy One, blessed be He, sent locusts who bore through the mountain, and it fell on his neck. He wanted to pull it over his head, but his teeth protruded on each side, and he could not remove it. This is the meaning of what is said, "You break the teeth of the wicked" [Ps 3:8], and as Resh Lakish expounded, for R. Simeon ben Lakish said: What is the meaning of what is written: "You break [*shibartah*] the teeth of the wicked"? Do not read "*shibartah*," but "*shirbabtah* [You have lengthened]." How much was [the height of] Moses? Ten cubits (aprox. 15 ft.). He took an ax ten cubits long, jumped ten cubits into the air, struck him on his ankle, and killed him.[34]

Interestingly, these babylonian traditions, perhaps specifically because of their questionable authenticity, repeatedly stress the fact that they were received from an early tradition. Thus, in the fantastic story from *b.Nid.* 54b cited above, it is emphasized at the beginning of this tradition that "this has been handed down by tradition,"[35] and so this tradition is afforded standing in a seemingly

34 For this story and its versions, see Ginzberg, *Legends of the Jews* (1928) 6:120 n. 695; Shinan, *The Embroidered Targum*, 172 (and for a similar mountain that served as a weapon in battle, see 139 and n. 190). For the measure of three parasangs specified here, see Rashi, q.v. "*Mahaneh Yisrael*," that refers to the dictum by Rabbah bar Bar Hana in *b.ᶜErub.* 55a. According to this, it would seem that we could conceive of the intriguing possibility of some connection between the exaggerations of Rabbah bar Bar Hana cited there and the source of our hyperbolic narrative (see below, n. 52).

It should also be noted that the lack of clarity concerning what happened to Og with that mountain and the protrusion of his teeth could be somewhat resolved by the version of Pseudo-Jonathan on Num 21:35, that explains that that creeping thing bored through the mountain, and then Og's head fell into it, and he could not extract it because of his protruding teeth. See also Shinan, *The Embroidered Targum*, 172 (incidentally, the version in the Babylonian Talmud speaks of locusts, while Pseudo-Jonathan mentions a caterpillar. The version possessed by the Spanish apostate Petrus Alfonsi, however, speaks of a small bird. See below, n. 67). Another possibility for relating what happened there appears in *Midrash Temurah*, included in Adolf (Aaron) Jellinek, *Bet ha-Midrasch* (2 vols.; Jerusalem: Bamberger & Wahrmann, 1938) 2:112, in the wording: "'A time for throwing'— corresponding to 'Og king of Bashan' [Ps 135:11] — the Holy One, blessed be He, threw that mountain that he had placed on his head in order to throw upon Israel; it was thrown on his neck and divided [*ve-nehelak*]" (perhaps the intent is that the mountain split, and in that manner fell on Og's neck; or perhaps it should read: *ve-nehnak* — he was choked?).

35 "*Gemara gemiri lah*"; for *gemiri* and *gemara* as an expression for transmission by tradition, see Wilhelm Bacher, *Die Exegetische Terminologie der Jüdischen Traditionsliteratur*, 2, *Die Bibel-und traditionsexegetische Terminologie der Amoräer* (Leipig: Hinrichs, 1905) 29; Chanokh Albeck, *Introduction to the Talmud, Babli and Yerushalmi* (Tel Aviv: Dvir, 1969) 4–7, 599–601 (Heb.).

babylonian *baraita*,[36] since it is extant only in the babylonian tradition, but it nevertheless also left its imprint upon the halakhic system, and not only in the *haggadah*:

> Our masters taught: If one sees the place of the crossing of the Red Sea, the fords of the Jordan, the fords of the streams of Arnon, hailstones in the Beth-horon descent, the stones that Og king of Bashan wanted to throw at Israel, the stone on which Moses sat when Joshua waged war with Amalek, Lot's wife, or the wall of Jericho that was swallowed by the ground – for all of these he must give thanksgiving and praise to the Omnipresent (*b.Ber.* 54a; see *Shulhan Arukh, Orah Hayyim* 218:1).

Additionally, *b.Nid.* 24b presents the following amazing tale in the name of the Tanna Abba Saul:[37]

> It was taught: Abba Saul said (or, some say, R. Johanan said), "I was a gravedigger. Once I was running after a deer, and I entered the thighbone of a corpse, I ran after it for three parasangs, but I did not reach the deer, nor did I come to the end of the thighbone. When I returned, I was told that this was [the thighbone] of Og king of Bashan."[38]

36 For seeming *baraitot* in the Talmud, see Louis Jacobs, "Are There Fictitious Baraitot in the Babylonian Talmud," *HUCA* 42 (1971) 185–96; Bejamin De-Vries, "Baraita, Beraitot," *EJ* 4 (Jerusalem, 1971) cols. 189–93.

37 There as well, however, there are voices attributing this tradition to the Amora Rabbi Johanan. Abba Saul was a third-fourth generation Tanna, the young pupil of Rabbi Akiva. At this juncture we should add a cautionary note that the manner in which I choose to present this is nothing more than conjecture, one that in my opinion is plausible, and a case could certainly be made for the babylonian attribution of the early sources of these traditions. Those disagreeing with me could join to these two references the tradition of the stone that was cast by Og, that is brought in the Babylonian Talmud as a *baraita*, and the tradition transmitted in the name of Rabbi Johanan in the name of Rabbi Simeon bar Yohai, that identifies the "fugitive" with Og (above, n. 29), in an attempt to argue against my hypothesis that the *haggadah* relating to Og's legendary height had already developed in the time of the *tannaim*. I, however, elected to present this in such a manner because I do not regard these babylonian attributions to be certain, and they are challenged by the fact that those traditions are not attributed to *tannaim* in the literature of Land of Israel *haggadot*, and the explicit midrash cited above concerning the modesty of Moses proves that the exegete-*tanna* did not maintain such a view, at least not according to what appears in *Sifrei*, Numbers.

38 Incidentally, it is related there, regarding the dimensions of Abba Saul himself: "And, perhaps, you would say that Abba Saul was a dwarf? Abba Saul was the tallest person in his generation, and Rabbi Tarfon reached to his shoulder; Rabbi Tarfon was the tallest person in his generation, and Rabbi Meir reached to his shoulder; Rabbi Meir was the tallest person in his generation, and Rabbi [Judah ha-Nasi] reached to his shoulder; Rabbi was the tallest person in his generation, and Rabbi Hiyya reached to his shoulder; Rabbi Hiyya was the tallest person in

It is noteworthy that, parallel to all these traditions appearing in the Babylonian Talmud, *Targum Onkelos* on Deut 3:11 contains an allusion to a conception that enlarges Og. *Onkelos* renders the words "and four cubits wide, by a man's fore-arm [*amah*, either: 'forearm' or 'cubit']" as "*ve-arba amin putiyeh be-amat melakh*," that is, according to this Og's height is to be measured by "*amat melekh* [the cubit/forearm of the king]," perhaps intending to Og himself, as appears in *Pseudo-Jonathan* on this verse: "*be-amta de-garmayh* [by his *amah*]."[39]

In Tractate *Soferim*, which might possibly be a bit later than the time of the redaction of the Talmud,[40] we find an additional development that comes from the babylonian direction of these traditions appears. This tradition connects Abraham and Og:[41]

> Og is Eliezer,[42] and the feet of the Patriarch Abraham would fit in his palm.[43] One time the latter rebuked him, and, due to his fear, one of his teeth fell. The Patriarch Abraham took it, and made beds of ivory from it, and he would sleep there. Some said, he made of it a chair, in which he sat all the days of his life. And who gave him [i.e., Og] to Abraham? Nimrod. Og went and built sixty towns, the smallest of which was sixty *mil* high, as it is said: "sixty towns, the whole district of Argob, the kingdom of Og in Bashan" [Deut 3:4]. And what did he eat? Sixty oxen, and every species of beast And what did he drink? One thousand measures. And what was a drop of his semen? Thirty-six litres. . . .

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his generation, and Rav reached to his shoulder; Rav was the tallest person in his generation, and Rav Judah reached to his shoulder; Rav Judah was the tallest person in his generation, and his attendant Adda reached to his shoulder." See Krauss, "Heroes and Giants in Israel," 291–93.

39 See Shinan, *The Embroidered Targum*, 144 and n. 224. Rashi cites this interpretation in his commentary on Deut 3:11: "'A man's forearm' – Og's forearm." See the discussion of this point in the supercommentaries on Rashi (Rabbi Elijah Mizrahi; *Siftei Khakhamim*; *Gur Aryeh*) and Nahmanides on the verse. It is a distinct possibility that the extant *Targum Onkelos* was influenced by the Babylonian amoraic sources, see Avigdor Shinan, *The Biblical Story as Reflected in Its Aramaic Translations* (Tel Aviv: Hakibbutz Hameuchad, 1993) 38–40 (Heb.); for the late dating of the redaction of *Pseudo-Jonathan* to the eighth century, see Shinan, *The Embroidered Targum*, 198 and the entire chapter (193–204).

40 See Michael Higger, ed., *Masekhet Soferim* (New York: Devei-Rabbanan, 1937) 78–81.

41 Tractate *Soferim*, *Hosafah* 1, 1:2, 366–67. For more on the midrashic connection between Abraham and Og, see *Bereshit Rabbah* 53:8 (Theodor and Albeck, eds., 565), for the provocative presence of Og at the banquet that Abraham held on the day that Isaac was weaned; *Kohelet Rabbah* 7: "Og went to the banquet of Abraham. . . ."

42 Interestingly, Rabbeinu Bahya notes in his commentary on the Torah (Charles B. Chavel, ed. [2 vols.; Jerusalem: Mossad ha-Rav Kook, 1974] 3:159–60) that some sought to understand this dictum not in accordance with its simple meaning, taking pains to explain that the intent here is merely to state that Og was descended from Eliezer, but Rabbeinu Bahya does not agree with this understanding.

43 I could not understand this sentence, and the editor, Dr. Michael Higger, did not explain this

The connection between Og and Eliezer, Abraham's servant, gave birth, on the one hand, to interesting developments in the late *haggadah*, but also, on the other hand, left the interpreters of the *haggadah* with several difficult problems of harmonization between these various haggadic figures. Thus, for example, *Pirkei de-Rabbi Eliezer*[44] relates that Abraham warned Isaac concerning the behavior of the servant Eliezer, since he feared lest Eliezer have relations with Rebekah on the way; Isaac consequently examined Rebekah's virginity immediately upon her arrival, to see that her hymen was intact, and only then did he marry her. The *midrash* states of Eliezer:

> The steward of Abraham's household was his servant Eliezer, and whence was his servant? When (Abraham) went forth from Ur of the Chaldees all the magnates of the kingdom came to give him gifts; and Nimrod took his first-born (son) Eliezer and gave him to (Abraham) as a perpetual slave. When (Eliezer had thus) dealt kindly with Isaac, he set him free, and the Holy One, blessed be He, gave him his reward in this world, so that there should not be a reward for the wicked in the world to come; and He raised him to kingship, and he is Og, king of Bashan.

We learn from this formulation of the *haggadah* that the linkage between the character of Eliezer and that of Og led, on the one hand, to the enhancement of Og's merits, since he now boasted the special merit of having served Abraham in the past, and even that of being the emissary guided by the Lord on his search for the intended wife for Isaac, to the house of Bethuel, the father of Rebekah;[45] while, on the other hand, this tie led to the shaming of Eliezer, since we now understand, inter alia, that Eliezer had been suspected by his master of licentious sexual behavior.[46]

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vague point. The version in *Yalkut Shimoni* 765 is: "Og is Eliezer, his foot was forty *mil*, and Abraham would place it in his hand." Does this *midrash* mean to say that Abraham was a giant, so many times as large as Og that the latter could put his huge feet in Abraham's hand? This understanding is puzzling, because the continuation of our text asserts that Abraham slept in a bed that he made from a tooth that fell from Og's mouth! The version that appears, however, in *Mahzor Vitry* (par. 524) proves that this is how the *midrash* was understood: "The man who was larger than the Anakites was Abraham. [. . .] For his height was as that of seventy-four men. And his eating and drinking, correspondingly so, like a total of seventy-four men. And his strength was certainly so."

44 *Pirke de Rabbi Eliezer*, chap. 16, pp. 110–12; and see *Yalkut Shimoni, Hayyei Sarah* 109.

45 *Yalkut Reuveni* (by Rabbi Abraham Reuben ha-Kohen Sofer, Poland, seventeenth century), *Hukat* 39, expressly mentions this merit of Og: "For he benefited the Patriarch Isaac by bringing him Rebekah."

46 From the viewpoint of the exegetical methodology of the *midrash*, we have before us the common mechanism of the identification of two biblical characters, events, or places. See Elbaum, "Rhetoric, Motif and Subject-Matter," 120 nn. 47–49. It should also be noted in regard to this

According, however, to this midrashic expansion, the different associative directions taken by the exegetes already lead to a striking contradiction:[47] Abraham's servant Eliezer is mentioned in the *midrashim* as entering Paradise together with Abraham, and according to one view, Eliezer did not die, and merited entering Paradise together with his master while alive[48] – so how could it be asserted that Eliezer, who is described in many *midrashim* as so very righteous,[49] is Og king of Bashan?[50]

The Og Narrative in the Medieval Jewish Commentary

Obviously, the haggadic character of Og, as set forth in the above *midrashim*, could have caused great discomfort to the interpreters of the Talmud and *haggadah* in the medieval period. These legends seem childish and baseless,[51]

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midrashic technique the great similarity it bears to the "*Verdichtung*" (condensation) in dream language of which Sigmund Freud speaks. For the similarity between the workings of dreams and the methodology of midrashic interpretation, see Maren Niehoff, "Associative Thinking in the Midrash Exemplified by the rabbinic Interpretation of the Journey of Abraham and Sarah to Egypt," *Tarbiz* 62 (1993) 339–59 (Heb.), and see my comments on this in my article: "More on Associative Thinking in the *Midrash*," *Tarbiz* 63 (1994) 443–50 (Heb.).

47 As was already noted by Rabbi David Luria, *Pirkei de-Rabbi Eliezer*, chap. 16, 38b, par. 53.

48 See the relevant narrative in *b.Bat.* 58a; this was stated explicitly in Tractate *Derekh Eretz* 1:18 (Michael Higger, ed., *The Treatise Derek Erez* [New York: Debe Rabanan 1935] 69); and in *Midrash Aggadah* on the Pentateuch edited by Solomon Buber (Vienna: n.p., 1894) on Gen 24:64, p. 60. See Daniel Sperber, ed., *Masechet derech Eretz Zutta* (Jerusalem: Tzur-Ot Press, 1982) 95–96 (Heb.), with references to additional parallels.

49 *Bereshit Rabbah* 60:31 (Theodor and Albeck, eds., p. 647) states that Eliezer's face resembled that of Abraham, and therefore was called "Blessed of the Lord"; in *b.Yoma* 28b he is depicted as an elder who was seated at the scholar's council. Also see *Yalkut Shimoni* on the Torah, *Hayyei Sarah* 109. Incidentally, the Og-Eliezer identification might have given rise to the tradition that maintained that Eliezer was the son of Nimrod. See Shinan, *The Embroidered Targum*, 163 n. 340. For the connection in the *haggadah* between Nimrod and the Nephilim, see Ginzberg, *Legends of the Jews* (1925) 5:201–2 n. 88. For the sources identifying the father of Eliezer with Ham, the son of Noah, see Ch. Merchavia, *The Church versus Talmudic and Midrashic Literature [500–1248]* (Jerusalem: Bialik Institute, 1970) 144 n. 69 (Heb.).

50 In order to resolve this difficult problem, that led the exegetical imagination *ad absurdum*, Rabbi David Luria (above, n. 47) finally proposes a response that appears in the writings of various commentators, that there were "two Ogs" (!). But here, too, we find ourselves stymied, as Luria himself attests in his commentary, because "From the *midrashim* [...] it is understood that the Og who was killed by Moses is the one who was Eliezer the servant of Abraham, and therefore Moses feared him."

51 "This teaching is foreign and distant, difficult to conceive, greatly confusing" (*Hiddushei ha-Geonim* on *Ein Yaakov*, *Berakhot* 54a, q.v. "*Even*"). See below, in the discussion of the commentary by *Rashba*, concerning the confusion strewn by this *haggadah*.

forcing many sages to engage in the "holy work" of the symbolic interpretation of these *haggadot*, in order to "redeem" them from their fantastic context.[52] This body of interpretation, as we shall see, not only served the needs of those within the Jewish community who found these *haggadot* difficult, it also provided defense for Jewish positions in polemics with Christians concerning the standing of the Talmud. Along the winding path that we follow in wake of the character of Og in the Jewish literature, we find that those commentators occupied in discovering the simple meaning of the biblical texts restored the biblical Og to human size, while those engaged in allegory explained the imaginary *haggadot* about Og in the Babylonian Talmud as somehow symbolizing lofty and highly significant spiritual matters.[53]

The limiting scope of this article does not permit detailed presentation of the many and varied commentaries and homilies that were proposed for the war of Moses and Og. I will, therefore, just set forth, in very concentrated form, the key approaches.

One direction present in the medieval commentary sought to emphasize that the *haggadot* in the Talmud are not to be accepted as an authoritative interpretation for what is described in the Bible. Thus, for example, Rabbi Abraham Ibn Ezra (1089–1164) teaches us in his commentary on the Torah (Deut 3:11) that we are to understand in literal fashion the biblical report of the size of Og's bed, that Og was twice as tall as a normal person, and no more. To this end he attacks the interpretation offered by *Targum Onkelos*, that the "*amat ish*" specified in Deut 3:11 in regard to the length of Og's bed means "the cubit of the king," a cubit that is not the usual unit of measure. Ibn Ezra states, in opposition to this view:

52 For general discussions of hyperbolic tales in the rabbinic literature, see M.B. Lerner, "Exaggeration by the Rabbis," *Mahanayim* 69 (1963) 68–73 (Heb.); Dina Stein, "Believing Is Seeing: A Reading of Baba Batra 73a–75b," *Jerusalem Studies in Hebrew Literature* 17 (1999) 9–32 (Heb.).

53 For the symbolic interpretation of the *haggadah* that began in the Geonic period, see Yonah Frankel, *Darkei ha-Aggadah ve-ha-Midrash* (The Ways of the *Haggadah* and the *Midrash*) (2 vols.; Givatayim: Masada, 1991) 2:501–31 (Heb.), who surveys the development of this interpretive tradition. Note should be made of the position taken by Maimonides, that served as a central milestone that influenced many medieval commentators: he was of the opinion that whoever understood the *haggadah* literally, when this does not meet the rational test of seeing the reality, is one of the fools who cause the honor of the sages and that of the Torah to be sullied (see Maimonides, *Commentary on the Mishnah*, introduction to chapter *Helek* of Sanhedrin [chap. 10], Rabbi Yosef Kafah, ed. [Jerusalem: Mossad Harav Kook, 1964] 200 [Heb.]); see also Yehoshua Horowitz, "The Attitude of the Geonim to the Aggadah," *Mahanayim* 7 N.S. (1994) 122–29 (Heb.); Dov Schwartz, "The Philosophical Commentary on the Bible and the Aggadah," *Mahanayim* 7 N.S. (1994) 158–65 (Heb.); Shaul Regev, "Philosophical Commentary on the Aggadah in the Sixteenth Century," *Mahanayim* 7 N.S. (1994) 176–85 (Heb.).

> "*Be-amat ish*" – by the forearm of every man. Now, it is double [that of a regular person]. It is not possible that this could be in accordance with his [Og's] forearm, for what, then, would Scripture come to teach? Moreover, he would not be (in the form of) a human being at all!

This was also explained clearly and at length by Maimonides (1135–1204) in his *Guide for the Perplexed* (2:47):[54]

> However, what the Torah literally states about Og does not belong to this group: "Behold, his bedstead was a bedstead [*ᶜeres*] of iron, and so on." For *ᶜeres* is bed: "Also our bed [*ᶜarsenu*] is verdant" [Song 1:16]. Now a man's bed is not exactly his size, for it is not a garment, which one puts on. The bed is rather always bigger than the individual who sleeps on it. And the usual and well-known thing is for it to be longer than the individual by a third of his length. If the length of the bed in question came to nine cubits, the length of him who slept on it must, according to the usual proportion of beds, have come to six cubits or a little more. And its dictum, "after the cubit of a man," means according to the cubit of an individual from among ourselves – I mean to say from among the rest of men – and not according to the cubit of Og. For all individuals have mostly proportionate members; accordingly it says that the length of Og was twice that of other men or a little more. This is doubtless anomalous for the individuals of the species, but is by no means impossible.[55]

That is to say, these commentators emphasize that, according to the simple meaning of the biblical text, all the imaginary exaggerations in the Talmud are not to be accepted. Og's size was approximately twice that of a normal person. This special height is mentioned in the tradition in Deuteronomy with a great deal of amazement, with testimony of this extraordinary size surviving in the iron bed of Og that remained in Rabbah of the Ammonites.

How, then, are we to understand the incredible tale in the Talmud concerning his tremendous size? Is it to be curtly discarded as being unsuitable for an intelligent person? Most of the medieval commentators are of an allegorical bent. They assume that we are to view Og's strength and his "giant size" as a symbol of another power, not necessarily physical, as we would imagine when we read the

54 Shlomo Pines, trans., *The Guide of the Perplexed* (Chicago and London: Univ. of Chicago Press, 1963) 407–8.

55 See Rabin, "Og," 254 n. 44, that refers to the estimation by archaeologists that the average height of the inhabitants of the Land of Israel in the prehistoric period was approximately 1.50 meters.

biblical story according to its literal meaning.[56] Thus, in the later commentaries, even if this is only implicit, and is not stated explicitly, this war is transformed from an earthly-historical war, as it appears in the Bible, into a mythical contest in the realms hidden from the eye.

Prominent milestones in the interpretive tradition of this medieval symbolic reading that are deserving of our attention are two outstanding commentaries that influenced the later interpretations of this legend, one esoteric and kabbalistic, and the other allegoric. The first is an exposition in the *Zohar* (*Hukat* 3:184[a]):

> "But the Lord said to Moses, 'Do not fear him [*oto*]'" [Num 21:34] – there are two instances of the whole [word] "*oto*" [i.e., with plene spelling], with two *vav's*. This is one, and the other is "until your fellow claims it [*oto*]" [Deut 22:2].[57] What is the meaning? That these are an actual *ot* [sign]. "Until your fellow claims" [. . .] This is how the *ot* of that lost article is to be understood. Here, too, "*oto*" is Og, who adhered to Abraham, and was a member of the latter's household. It was decreed [that he be] with him, and [because of this, Og] accepted upon himself the holy sign [i.e, of circumcision].[58]

56 Exceptional and relatively late is the commentary by *Maharal* (Judah Loew ben Bezalel, ca. 1525–1609; On him as a commentator of the *haggadah* see Jacob Elbaum, *Openness and Insularity* (Jerusalem: Magnes, 1990) 105–118 [Heb.]) in *Hiddushei Haggadot* on *b.Nid.* 24b, who interprets in symbolic fashion the talmudic haggadic Og narrative, while repeatedly stressing that "all of his [Og's] strength was material, and similarly the strength to which he adhered, while the strength of Israel is separated from the material, because they adhere to Him, may He be blessed. Consequently, Og was distinguished by a quality that is [solely] material, namely, the expansion of which the material is capable." In another place, however, *Maharal* himself sets forth the position that was more widespread among the commentators. And so he states in his supercommentary *Gur Aryeh* on Rashi, Gen 14:13, that according to the talmudic tradition that "they [Og and Sihon] survived the Flood [and] that they were among the descendants of Shamhazai [. . .] and he possessed an especially divine quality. [Consequently,] it was not fitting, considering his own nature, to die from the water, but rather by the hand of Moses, the man of God, who bested him by force of his divine attribute, since the water was on a lesser level, and was not intrinsically suitable to nullify the power of Og." See also *Maharal*'s commentary in *Gur Aryeh* on Num 21:35.

As regards additional commentaries on this *haggadah*, the reader is referred to the commentaries published in *Ein Yaakov* on the haggadic text in *b.Ber.* 54b, and the detailed list of commentators who related to it in this text that was compiled by Zechariah Porto in the book *Asaf ha-Mazkir* (Venice, 1680) 38a, 299b.

57 In both instances *oto* (אתו) appears in our *Sifrei Torah* today with defective spelling, but see *Kennicott Bible* (Numbers, 322; Deuteronomy, 409) that mentions at least one manuscript in which both are written with plene spelling.

58 As explained in the commentary at the beginning of the exposition (in the part not quoted here), that is based on what is written in Gen 17:27: "and all his [Abraham's] household, his homeborn slaves and those that had been bought from outsiders, were circumcised with him."

> When Og saw that Israel were approaching him, he said: "I certainly shall be first with my merit, and this [the merit] I shall place opposite them." At that time Moses feared, how could [he] uproot the sign that Abraham had impressed on him. He said [to himself]: Undoubtedly his [Moses'] right[-hand][59] died, for the right is supposed to be victorious over him. The Holy One, blessed be He, immediately said: "Do not fear *oto*" – do not fear that sign of his, and you will not need even the right-[hand]. "For I give him into your hand" – your left hand shall uproot him from the world, since he tarnished his sign, and whoever tarnishes that sign deserves to be uprooted from the world, and certainly your left hand, that is "your hand," will uproot him from the world.

According to this exegetical orientation, Moses was apprehensive of some spiritual merit that the Divine accounting attributed to Og, a merit connected with the "sign" that was imprinted in him in the period that he was Abraham's servant (i.e., the merit of circumcision).

It should be recalled, once again, that we have already encountered, in the *midrash* from Gen. Rabbah 41(42):13, the essence of the idea that Og had accumulated some "merits" in the past for good deeds that he had performed. That *midrash* states that God promised Og, as recompense for his good deed in informing Abraham of Lot's being taken captive, that "Your life, the reward for the steps that you take is that you will live long in the world." The *midrash* in Num. Rabbah (19:32)[60] connects this with Moses' fear of Og that is reported in the Bible (Num 21:34: "But the Lord said to Moses, 'Do not fear him'"), assuming that even if Moses was not aware of Og's detailed history, he nevertheless understood that there was cause for his apprehension:

> When Moses came to do battle [with Og], he feared him, saying: "I am 120 years old, and this one is more than five hundred.[61] If he did not have merit, he would not have lived all those years." The Holy One, blessed be He, said to Moses: "Do not fear him, for I give him [. . .] into your hand" – with your hand kill him.

As we have seen, over the course of time the various *midrashim* formulated several possible explanations for Moses' fear of Og due to some spiritual merits,

59 In his commentary *Ha-Sulam* to the *Zohar*, vol. 16, *Hukat*, p. 29, Rabbi Yehudah Ashlag argues that the *Zohar* alludes here to Aaron, Moses' brother.

60 For the late redaction of this *midrash*, see Hananel Mack, "Numbers Rabba: Its Date, Location and Circulation," *Te'uda* 11 (*Studies in the Aggadic Midrashim in Memory of Zvi Meir Rabinowitz*) (Tel Aviv: Tel Aviv Univ. Press, 1996) 91–105 (Heb.).

61 For the different counts in the *haggadah* of the years of Og's life, see Ginzberg, *Legends of the Jews* (1928) 6:118–19 n. 684.

namely: the merit of the announcement that he transmitted to Abraham concerning Lot's fall into captivity; the merit of having served Abraham in the past; and the merit of his having been circumcised by Abraham.

The second interpretation of the Og narrative that wielded considerable influence over the interpretations of later commentators is that of *Rashba*, Rabbi Solomon ben Adret of Barcelona (thirteenth century).[62] It may be assumed that *Rashba* was quite disturbed by the alien nature of this *haggadah*, since it was frequently mentioned by Christians in their attacks on the irrational manner of thought of the talmudic legends. *Rashba* faced these attacks, and attempted to resolve the difficult aspects of the talmudic *haggadot* in a manner that would be acceptable to the educated people of his time; according to one opinion, he even engaged in a face-to-face dispute with one of the leading opponents of the Talmud at the time, Raymond Martini.[63]

Our specific haggadic tale regarding Og was among the leading *haggadot* employed as a weapon by those Christian disputants who sought to impugn the Talmud. Testimony regarding this has come down to us in the words of Nicholas Donin in his debate with R. Jehiel of Paris.[64] This *haggadah* is also cited, and presented as lacking all reason, by Petrus Alfonsi,[65] as it was similarly attacked by Petrus Venerabilis (Peter of Cluny)[66] in the claims he raised against the Talmud.

Alfonsi makes the following calculation: by a rough estimation it may be learned from this narrative that Og's head was ten cubits; accordingly, that *ḥagav* (locust)[67] had to penetrate ten cubits so that the mountain could land on Og's neck! How, then, was this possible?

62 The commentary by *Rashba* appears in *Ein Yaakov* on *Berakhot* 54b, q.v. "*Akar Tura*." *Rashba* was a rabbi and *posek* (decisor of Jewish law) in his city, Barcelona, and wrote collections of novellae on the Talmud and many legal responsa. For *Rashba* as haggadic interpreter, see Carmi Y. Horowitz, "Kabbalah and Philosophy in Rashba's Commentary to the Aggadah," *Daat* 18 (1987) 15–25 (Heb.); Leon A. Feldman, *Commentary on the Legends in the Talmud by R. Solomon ben Abraham ben Aderet* (Jerusalem: Mossad Harav Kook, 1991) 5–17 (Heb.); Yonah Frenkel, *Midrash and Agadah* (3 vols.; Tel Aviv: Open Univ., 1996) 3:868–70 (Heb.).

63 See Jeremy Cohen, "The Polemical Adversary of Solomon ibn Aderet," *JQR* N.S. 71 (1980) 48–55.

64 Reuben Margoliot, ed., *Vikku'ah Rabbenu Yehiel mi-Paris* (The Disputation of Rabbenu Jehiel of Paris) (Lvov: n.p., 1910) 24 (Heb.). Donin was a Jewish apostate (according to one opinion, he had been a Karaite) who apparently joined the Franciscan order. Following the dispute with Rabbi Jehiel, the Talmud was burnt, apparently in 1242. See Merchavia, *Church versus Talmudic and Midrashic Literature*, 227–48; see also Jeremy Cohen, *The Friars and the Jews: The Evolution of Medieval Anti-Judaism* (Ithaca and London: Cornell Univ. Press, 1982) 61 n. 19.

65 Merchavia, *Church versus Talmudic and Midrashic Literature*, 105–6. Petrus Alfonsi is Moses Sefaradi, who converted in 1106; see Merchavia, 93 ff., and the list of scholarly works, 94 n. 4.

66 See Merchavia, *Church versus Talmudic and Midrashic Literature*, 139–40; for Petrus Venerabilis, see Merchavia, 128 ff.

67 That, according to his version, is a small bird (*Upupa*; see above, n. 34).

It was not for nothing, therefore, that *Rashba* preceded his commentary on this *haggadah* with a lengthy introduction regarding the general difficulties encountered when interpreting the legends of the Talmud that "have many reasons why they appear [in the Talmud] in obscure language [codes]." We can understand from this that this *haggadah* greatly troubled *Rashba*, also because of the fact (that we shall clarify) that he completely rejects the simple meaning of the textual stratum in *b.Ber.* 54b. This interpretive method, that of the extreme rejection of the literal meaning, was acceptable to *Rashba* only in special cases, in which he sensed that these legends served as a target for attacks by the Christians.[68]

Rashba adopts an intriguing interpretive strategy concerning this *haggadah*. On the one hand, he is not willing to forgo the totally realistic description of Og as a regular person, even if he was patently extremely tall and big, and therefore was considered to be a "giant"; but, on the other, *Rashba* naturally does not regard the talmudic *haggadot* to be empty and baseless exaggerations. The solution that he proposes is to distinguish between the two texts before us: between the *baraita* (*b.Ber.* 54a) that assumes that it is still possible to find the stone that Og sought to throw at the Israelites, and the wondrous tale that appears on the following page of the Talmud (54b), of Og who uprooted a mountain.

He sees the "stone" in the first text as a completely realistic stone, that certainly suits the depiction of Og as a person of especially large dimensions. The following tale, in contrast, about a "mountain," is not, in his opinion, a story that can be accepted on the level of *peshat* (the literal meaning), but rather is to be viewed as a story that is solely allegorical.

Rashba asserts that this "mountain," that was Og's weapon, alludes to the merit of the Patriarchs, whom some exegeses connect with mountains;[69] he

68 See Horowitz, "Attitude of the Geonim," 25.

69 *Rashba* mentions an exposition connected with a verse in Micah (6:1): "Come, present [My] case before the mountains." Such an explicit exposition on this verse from Micah appears, to the best of my knowledge, only in the late *midrash* known as *Alpha-Betot* that was copied by Shlomo Aaron Wertheimer (in the additions of Abraham Wertheimer) in *Batei Midrashot* (2 vols.; Jerusalem: Mossad Harav Kook, 1973) 2:443 (Heb.): "'Come, present [My] case before the mountains, and let the hills hear you pleading'–'mountains' refers solely to the fathers of the world [. . .] and hills, only to the mothers" (see n. 41 by Wertheimer). The idea itself, however, is undoubtedly to be found in the Talmud. Although *Rashba* does not expressly mention this, we hear in *Rashba*'s commentary here, that mentions the jumping (*dilug*) in this context (see our explanation, below), an echo of the well-known verse in Song of Songs (2:8): "Leaping [*medaleg*] over mountains, bounding over hills." See *b.Roš Haš.* 11a: "'Hark! My beloved! There he comes, leaping over mountains, bounding over hills': 'leaping over mountains' – by the merit of the Patriarchs; 'bounding over hills' – by the merit of the Matriarchs." See also *Tanhuma*, *Balak* 12: "He [Balaam] began, saying, I was from the lofty ones, from the camp of the Patriarchs" (by the way, mountains are a kabbalistic symbol for the *Sefirot* of *Ḥesed*, *Gevurah*, and *Tif᾽eret*

does this in order to state that Og relied upon the merit of what he had done for Abraham, who was one of the "Patriarchs," and who was considered to be a "mountain." In consequence, Moses feared Og. The locusts, an allusion to the prayer of Israel ("whose power is in their tongue"),[70] "bored through" the merit of this "mountain." After this, Moses also joins this war, as he assembles against the merit of Og three different merits: the merit of the Patriarchs to which the jumping of ten cubits alludes – a seeming jumping back, to the past, to take from there the merit of the Patriarchs to aid the Children of Israel;[71] Moses' own, independent merits, to which his height of ten cubits alludes; and the merit of the people of Israel as a whole, to which the ten cubit long ax in Moses' hand alludes ("they were compared to the tool that was placed in his hand, that he used"). All these were the weapons that Moses arrayed against the merit of Og, by means of which the latter was eventually vanquished.

Due to the special difficulties raised by this part of the talmudic text, *Rashba* accordingly applied to it – in contrast with the preceding *baraita* – all the allegorical tools known to him for such difficult instances, and argued that this tale bears no relation to what occurred in the physical reality, but was connected only to the metaphysical reality.

The Og Narrative in the Commentary of the *Ahronim*

Although it was already rooted in the Jewish tradition that Og was not simply a giant with great physical strength,[72] some of the later commentators, in the period known as that of the *Ahronim* (the period following the codification of the *Shulhan Arukh* in the sixteenth century), refused to take this idea at face

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that correspond to the Patriarchs; see Rivka Schatz Uffenheimer, *Hasidism as Mysticism: Quietist Elements in Eighteenth Century Hasidic Thought*, Jonathan Chipman, trans. [Princeton – Jerusalem: Princeton Univ. Press – Magnes, 1993] 162 n. 46).

70 See below, n. 79.

71 For the sources of the theme of jumping, see above, n. 69.

72 The haggadic commentary of the *Ahronim* is distinctly eclectic. Different interpretive methods are mixed together in it, and are presented as an integral unit (for the general phenomenon, see Frankel, *Darkei ha-Aggadah ve-ha-Midrash*, 2:527–31). At times the *Ahronim* explain certain *haggadot* in allegorical fashion, while nonetheless emphasizing that, beyond the allegorical interpretation, these expositions are also to be understood according to their simple meaning. *Maharsha* as well acts in this manner on occasion (see Frankel, 530; for *Maharsha* and his haggadic commentary, see below). Nonetheless, it is significant that for the current *haggadah*, he does not say this. It may be assumed that these tales exercise the imagination to such extreme lengths that even *Maharsha* is of the opinion that it is not fitting for an intelligent person to believe them literally. *Maharsha* acted in this manner when explaining especially difficult haggadic texts, such as those touching upon anthropomorphism in their depictions. See: Frenkel, *Midrash and Agadah*, 3:895–96.

value and simply assume, as what seemed to be generally axiomatic from the early *midrash* to the late medieval commentary, that the "wicked" Og possessed spiritual merits.

Thus, we see two main directions in the various exegeses and interpretations that were proposed in the interpretive period of the *Ahronim* for the struggle between Moses and Og.

One direction seeks to understand Og's supernatural power as being mainly demonic;[73] while the other continued the orientation known from the medieval period, and although the commentators adopting this direction attribute to Og power that ensues from his spiritual merits, it is evident from their teachings that they searched for a logical and systematic structure that could explain all the separate Og legends in a manner that would, on the one hand, provide us with a comprehensive and uniform picture; but that, on the other hand, would also succeed in explaining these narratives in symbolic fashion, as possessing moral-religious significance.[74]

Beyond, however, this classification of the commentators, they seemingly share the desire to place the story on a totally contrasting, black-and-white, diametrical structure. For until then, the narrative had lacked this: on the one hand, it presented a righteous individual such as Moses, but he was not faced by a wholly wicked person, but rather by someone whose merit was insufficient to defeat the righteous Moses.

We will now present these two interpretive directions,[75] and in light of what we propose, the reader will now easily understand why these two directions

73 As *Maharsha*, for example, stresses (see n. 76, below). it cannot possibly be assumed, he asserts, that Og's strength ensued from purely spiritual merits, for Og knew that Moses possessed special merits before God, and how could Og have engaged in such a struggle with Moses from the outset, since "he did not rely on having the merit of forefathers possessed by Moses [the intent is to his serving Abraham in the past], more than Moses [himself] had." We therefore should assume that certainly regarding Og, as the son of Ahijah son of Shamhazai, descended from those angels who came down to the sons of men, "their power came from the side of impurity" (see also below).

74 And thereby clarify how this non-Jew came to possess such tremendous spiritual powers that threatened the merits of Moses. This direction will be presented below specifically from a late hasidic source (see n. 81), even though it could already be found in the above-mentioned commentary by *Rashba* and in the *Darash Moshe* commentary cited in *Hiddushei ha-Geonim*, because I chose to present what seemed to me to be the most sophisticated symbolic development, in terms of aesthetics, that I found in the exegetical texts.

75 For a partial list of the interpretations by *Ahronim* of the Og *midrashim*, see Moshe Tzuriel, *Otzrot ha-Aggadah* [The Treasures of the *Haggadah*] (2 vols.; Benei Berak: Mishor, 1969) 2:43, 404, 433–34 (Heb.).

Since I do not intend to offer any historical argument here, but rather to suggest a fundametal typology of the late exegetical thought, I allowed myself to choose these two representative examples, despite the distance of place and time, and the cultural expanse, from which they come; because these two central exegetical directions are expressed in their commentaries

finely hone the opposing poles of the narrative of the war between Moses and Og: one "blackens" the character of Og and presents this battle as a clear-cut struggle between the forces of impurity and those of sanctity; and the other transforms Og into a total righteous one, on the very same level as that occupied by Moses, but argues that the opposing poles in this war story mark the distinction between the people of Israel, that was chosen by the grace of God to be His children, and the non-Jewish peoples, who were removed from this sphere.

The first interpretive method is clearly formulated in the commentary by *Maharsha*.[76] He attempts to explain that Og's power could not be a consequence solely of the merit of his good deeds, for no one could conceive, so he writes, that in the realm of merits, Og could compete with Moses! We should therefore explain that his power came mainly from the demonic side,[77] as a power that emerges from the aspect of impurity that he inherited from his forefathers, the angels who had relations with the daughters of men.[78] According to this explanation, Moses would not have feared Og's power of impurity for its own sake, if this had not been united with the special merit the king of Bashan possessed for having informed Abraham that his nephew Lot had been taken captive. *Maharsha* understands that the mountain uprooted by Og that was of three parasangs (12 Roman miles), is representing the 12 impure forces of the Zodiac that Og desired to cast upon the heads of the Israelites, that is, on Moses, who was considered to be the "head" of the people. The locusts, in contrast, symbolize, according to the above interpretation by *Rashba*, the merit of the Patriarchs, for which *Maharsha* finds an allusion in the associative linkage to the Patriarch Jacob, who at times is referred to as "worm Jacob";[79] accordingly,

in the sharpest and clearest manner that I found, while in the other commentaries, these matters often appear in the form of incidental comments, and at times the different methods are indiscriminately intermingled.

76 Rabbi Samuel Eliezer Edels (1555–1631), in his commentary published in the Vilna edition of the Talmud, *Hiddushei ha-Aggadot* on *b.Ber.* 54b. For his commentary on *haggadah*, see the survey by Frenkel, *Midrash and Agadah*, 3:876 ff., 895; Elbaum, *Openness and Insularity*, 135–142. See also Aaron Ahrend, "*Hiddushei Aggadot* by *Maharsha*," *Mahanayim*, 7 N.S. (1994) 166–75 (Heb.).

77 *Maharsha* develops here his own interpretive direction, that diverges on this point (the addition of the demonic theme) from the above-mentioned interpretation by *Rashba*. The printed *Hiddushei ha-Geonim* on *Ein Yaakov* includes an additional symbolic interpretation (*Darash Moshe*), that identifies Og's demonic nature as an attempt to seduce and incite Israel by the Evil Inclination that, according to him, is represented by the stone that Og sought to cast upon them ("You already know that it is the Evil Inclination that is called in their language, 'stone'; see *b.Sukkah* 52b: 'If he [the Evil Inclination] is of stone, he will dissolve'").

78 On this point, *Maharsha* bases his interpretation on what is stated in *Pirkei de-Rabbi Eliezer*, chap. 22 (in the 1852 Warsaw edition: 50a–51b). This source, however, contains only a collection of views concerning the power and evil deeds of these angels. But see the sources we listed in n. 32, above, relating to these *midrashim*.

79 *Maharsha* unconsciously identifies *tola ʿat* (worm) with *ḥagav* (locust). His explanation is based on the comparison by the Rabbis of Israel to a worm, and their stating that "This worm's might

the boring through the mountain by the locusts expresses the undermining of Og's demonic power by their prayer. And when Og saw that he did not succeed in casting the mountain on them (killing them by his power of impurity), he attempted to at least save himself by utilizing his remaining merit for the good deed that he had performed for Abraham; this is the meaning of what is stated in our story, that Og wanted to pull the mountain over his head, but "his teeth protruded." Teeth are a symbol of evil, since the wicked tear apart the righteous with their teeth, and they "are pulled to adhere to the power of impurity, that he had from his forefathers." Consequently, Og was not successful in using for his salvation the remaining merit that he possessed. In this moment of total weakness, Moses could jump up and strike him on his ankle, that is to say, cancel for him "the merit of his walking with his ankles" (to tell Abraham of the captivity of Lot) and prevail over him.[80]

I found the second direction, that acknowledges Og's spiritual power and explains it in a manner that is plausible to the reader, in the teachings of the hasidic interpreter of *haggadah* Rabbi Zadok ha-Kohen of Lublin.[81] On this topic Rabbi Zadok sets forth an orderly and detailed teaching, that presents the Og narrative and the surrounding mythoi as a single uninterrupted narrative with profound symbolic content, that expresses hidden spiritual struggles that are not revealed to the reader at first glance. In contrast with *Maharsha*'s placing Og at the extreme end of the side of impurity, facing Moses who stood against

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is only in its mouth." *Maharsha* apparently referred to the exposition in *Midrash Tehillim* 22:20 (Solomon Buber, ed. [Vilna: n.p., 1891] 191): "'But I am a worm, less than human' [Ps 22:7] – just as this worm has only a mouth, so, too, Israel has only the prayer of the mouth. Just as a worm uproots the tree with its mouth, so, too, Israel with their mouth and their prayers uproot evil decrees that the [non-Jewish] people of the world plan against them. This is the meaning of what is written, 'Fear not, O worm Jacob'" (Isa 41:14). For the biblical phrase "worm Jacob" in the *midrash*, see, e.g., *Bereshit Rabbah* 100:3 (Theodor and Albeck, eds., 1286).

80 All that remains now for *Maharsha* to explain is the symbolic significance of the "ten cubits" of Moses; he maintains that they allude to the ten cubits height of the Tabernacle. That is, the narrator thereby sought to say that by the merit of the establishment of the Tabernacle, Moses was capable of striking and killing Og.

81 Rabbi Zadok ha-Kohen sets forth this line of reasoning in two main passages in his books: *Tzidkat ha-Tzaddik* (Lublin: n.p., 1913) par. 93, pp. 27–28; *Resisei Laylah* (Lublin: n.p., 1903) par. 44, pp. 84–86.

Rabbi Zadok ha-Kohen (1823–1900) served as the *admor* (hasidic rabbi) for his followers after the death of his teacher, the Seer from Lublin, beginning in 1888. Rabbi Zadok developed a unique exegetical method, that combined vast halakhic and haggadic knowledge with psychological and philosophical conceptions in a kabbalistic-hasidic spirit. For his exegetical principles, see the recent article: Sara Friedland, "'Proximity' and 'Shelter': On Two Homiletic Principles in the Writings of Rabbi Tsadok Ha'cohen from Lublin," *Akdamot* 8 (1999) 25–42 (Heb.). For another interesting development, that proceeds in a different direction, see Rabbi Samuel Bornstein, *Shem mi-Shmuel, Numbers* (6 vols.; Jerusalem: Sochotchover Yeshiva, 1974) *Hukat*, 40–41 (see also Bornstein, *Genesis*, 1:344–48).

him at the other extremity of the side of sanctity, Rabbi Zadok positions both on the same end of the spectrum: he maintains that both are totally righteous, since, in his opinion, "by the standard of the sons of Noah, they [Og and his brother Sihon] were completely righteous, for there were none comparable to them in the generation of the children of Noah."[82] Consequently, in this sphere of pure "struggle," Moses and the Israelites could not win a clear victory.

Two prominent subjects are at the center of this interpretive method: the Torah and the "observance of the covenant [*shemirat ha-berit*]," i.e., taking care that the seed of the male not be wasted, a theme that is completely absent from the early interpretations of the character of Og. Rabbi Zadok's exegetical method explains the source from which Og drew his great merit, that the Babylonian Talmud (*b.Nid.* 61a) claims instilled fear in Moses.

According to Rabbi Zadok, Og was an "observer of the covenant"[83] who "never saw nocturnal pollution in his life." He was unparalleled in his exceeding taintlessness from any sexual craving,[84] and this gave him such unique merits that Moses feared to struggle with him.[85] The fact that, according to the *midrash*, Og was a "fugitive" who had survived from the generation of the Flood is also connected by Rabbi Zadok with the sexual theme. The sin of wasting seed is connected in the dictum by Rabbi Eliezer (*b.Nid.* 13a) with the sin of the Flood: "Rabbi Eliezer says: Whoever holds his membrum [sexual organ] while urinating, it is as if he brings a flood upon the world." Rashi explains that "this transgression was [common] among them, as it is written, 'all flesh had corrupted' [Gen 6:12], and they said: 'with the heat [of passion] they sinned'"; the following page of the Talmud (13b) applies the appellation "deserving [destruction by] the Flood" to those males who engage in sexual relations with children "by way of limbs."[86] Thus, according to this conception, one who was saved from the Flood

82 *Resisei Laylah*, par. 44, p. 86.

83 It may be assumed that Rabbi Zadok was influenced on this point by the idea set forth in the *Zohar* concerning Og's "covenant" merit.

84 That, according to Rabbi Zadok, might be rare among the non-Jews, but "we have also found those among the non-Jews who were free of this."

85 In the spirit of the same interpretive orientation that maintains that Og's power was not necessarily physical, he stresses: "the praise of the great and powerful kings lies solely in their height and strength, that is, in their spiritual attributes and their might in the conquering of their [evil] urge" (*Resisei Laylah*, par. 44, p. 86).

86 This refers to a sexual game involving the sexual organs of the children, but this does not involve anal penetration, and therefore such activity as well is regarded as a form of masturbation. See Rashi ad loc., q.v. "*Derekh Avarim*"; for an additional clarification of this issue, see Elimelech A. Halevi, *Erkhei ha-Aggadah ve-ha-Halakhah le-Or Mekorot Yevaniʾim ve-Latiniʾim* (The Values of the *Aggadah* in Light of Greek and Latin Sources) (Tel Aviv: Dvir, 1982) 306 (Heb.); Daniel Boyarin, "Rabbis and Their Pals; or, Are There Any Jews in 'The History of Sexuality'?" *Zemanim* 52 (1995) 52 (Heb.).

must be completely free of the sin of masturbation and the sexual desires that were totally unbridled in that generation (that was matched by the spread of the Flood throughout the physical world in the same wild and unrestrained manner).

Rabbi Zadok finds additional proof that Og controlled his sexual desire in that the land of the latter, Bashan, was given (together with other lands) as the portion of the descendants of Manasseh (the half-tribe of Manasseh), who are descended from Joseph – who was already mentioned by the Torah for his peerless ability to control his sexual desire, when he withstood the test and did not fall prey to enticement by the wife of Potiphar.[87]

To the data assembled until this point, Rabbi Zadok now adds a midrashic allusion that appears in the Babylonian Talmud (*b.Hul.* 139b) from which Rabbi Zadok learns that Moses, too, was a "fugitive," a survivor from the Flood generation;[88] since Moses was also known as one who "abstained from women,"[89] he therefore, according to Rabbi Zadok, also was completely free of any sexual desire.[90]

We now can understand the dimensions of the struggle between Moses and Og, not as an earthly battle, nor even as a contest with one who possesses perilous demonic power, but rather as a "title fight," a sort of wrestling match between two spiritual giants, whose control of their sexual urge reached the level of a special art, thus imparting each with special righteous merits. This, then, Rabbi Zadok maintains, is why Moses was so apprehensive of Og the "giant"; God therefore had to assuage Moses' fear of Og with special words of encouragement: "Do not fear him, for I give him [. . .] into your hand" (Num 21:34).

In another place Rabbi Zadok also adds the argument that Og had a tangible affiliation to spirituality and Torah study. Here Rabbi Zadok plays with the concept of "water," connecting the waters of the Flood with the power of the Torah.

87 For Rabbi Zadok ha-Kohen's general psychological theory concerning the relationship between sexuality, on the one hand, and narcissism and egocentrism, on the other, see, for now, mine: Admiel Kosman, *Men's Tractate* (Jerusalem: Keter, 2002) 58–63 (Heb.).

88 The talmudic passage states only that the book of Genesis already alludes to the name of the yet-to-be-born Moses: "Where is Moses indicated [in the Torah]? In [the verse]: 'Since he too [*beshagam*] is flesh'" (Gen 6:3). Rashi explains: "*Beshagam* (בשגם) has the same numerical value as משה, and it is written there [in Genesis]: 'let the days allowed him be one hundred and twenty years,' and so was the lifetime of Moses. That is to say: Someone *beshagam*, Moses, will be born." Rabbi Zadok, however, maintains that this is to be understood as Moses already being alive during the generation of the Flood, adding to this the allusion "I drew him out of the water" (Ex 2:10), that was stated about Moses.

89 See *Sifrei*, Numbers 99 (Horovitz, ed., 98); see also Joshua Schwartz and David Elgavish, eds., *Me-Peirot ha-Ilan* (From the Fruits of the Tree) (Ramat Gan: Bar-Ilan Univ. Press, 1998) 426–27 (Heb.).

90 See also the passage in Rabbi Zadok, *Resisei Laylah*, par. 44, p. 86; see also below, n. 92.

This same force, that was so copious in the time of the Flood, was misused, and violently turned into the drowning waters of the Flood. According to this reasoning, Og would not have been saved from drowning in the waters of the Flood if it were not for "his necessarily having some association with the Torah."[91] Rabbi Zadok finds support for this thesis in the fact that the above passage in *Pirkei de-Rabbi Eliezer* contains the identification between Og and Eliezer, and it is said that Eliezer "drew and gave to drink" to others from the Torah of his master (Abraham).[92]

The question now arises: if Og really possessed so many merits, as someone completely righteous in his own right, what then tipped the scales in favor of Moses, and against Og (and was at the basis of the divine words of encouragement to Moses), if, in the final analysis, these two antagonists possessed equal spiritual merits? Rabbi Zadok responds to this:

> This is the main element of the eternal grace of God: once the Torah had been given and Israel had been chosen, it was impossible for any other nation to draw close before him [the Lord,] may He be blessed; as it is written in the beginning of the *Mekhilta*:[93] "Until they were chosen. . . ."[94] And even if [the non-Jew] were to observe all the commandments of the Torah [this would be of no avail, and he could not adhere to the Lord, rather] he must convert and be called by the name of Israel. Otherwise, [he would be within the category of] "an idolater who engages in the

91 *Resisei Laylah*, par. 44, p. 86. For water as the Torah, see the preceding note.

92 See above, n. 49. Rabbi Zadok bases this symbolic interpretation of water in the rabbinic sources. Since "water" symbolizes the Torah, then the Flood generation possessed great capabilities in the spiritual realm, but "by their sin, the bounty of the water of the Torah was turned into the water of the Flood." Moses, however, was saved from these sins and therefore could survive and in the future bring down the Torah to the people of Israel, and even Og – as we are forced to say, according to Rabbi Zadok's understanding – "possessed some necessary affiliation to the Torah."

Regarding the metaphor of water in the rabbinic literature as symbolizing the Torah see: Yassif, *The Hebrew Folktale*, 487 n. 44; Ivan G. Marcus, *Rituals of Childhood: Jewish Acculturation in Medieval Europe* (New Haven: Yale Univ. Press, 1996) chap. 4, n. 84.

93 Rabbi Zadok alludes here to (Hayyim S. Horovitz and Israel A. Rabin, eds.) *Mekhilta de-Rabbi Ishmael, Pis'ha, Bo,* par. 1 pp. 2–4.

94 This exposition in *Mekhilta* contains a list of things for which the moment of selection by God invalidated the others from fulfilling that same spiritual role. Thus, for example, "until the Land of Israel was chosen, all the lands were fit for *dabarut* [prophecy]; once the Land of Israel had been chosen, all the other lands were excluded." A perusal of this *midrash*, however, reveals that the selection of Israel, specifically, and the invalidation of the non-Jews are absent from this list.

> Torah is liable. . . ."[95] For this is the heritage of the congregation of Jacob [see Deut 33:4],[96] specifically.[97]

In other words, according to this line of reasoning, Moses' spiritual power is insufficient to prevail over the spiritual power of Og, and it is solely the choosing by the Lord in His grace of the people of Israel that determined, beginning from the time of the Revelation, that the non-Jew cannot personally adhere to God (even if he observes all the commandments of the Torah); it is only this fact that eventually tipped the scales.[98]

95 This is an allusion by Rabbi Zadok to the dictum by Rabbi Johanan in *b.San.*59a: "A Gentile who studies Torah is liable for the death penalty, as it says, 'Moses charged us with the Torah as the heritage [of the congregation of Jacob]' (Deut 33:4) – a heritage to us, and not to them." Incidentally, for the opinion of Maimonides on this subject, see *Mishneh Torah*, Laws of Kings 10:9, and *She'eilot u-Teshuvot ha-Rambam*, par. 149; for the position of Rabbi Menahem ha-Meiri in *Beit ha-Behirah*, see Israel M. Ta-shma, *Talmudic Commentary in Europe and North Africa: Literary History, Part Two: 1200–1400* (Jerusalem: Magnes, 2000) 167–70 (Heb.), who provides a lengthy explanation in light of the positions of other *Rishonim* (medieval authorities).

96 For the entire quotation to which Rabbi Zadok refers, see the preceding note.

97 *Resisei Laylah*, par. 44, p. 86. Cf. what Rabbi Zadok wrote in *Kuntres Divrei Khalomot* (printed at the end of the book *Resisei Laylah*) par. 25, pp. 195–96, where he adopts a different approach.

98 The selection of Israel by God, in light of this thesis, has no logic or reason, it rather is a gesture of divine grace (*ḥesed*): "Regarding this it is said, 'His steadfast love [*ḥasdo*] is eternal' [in numerous biblical passages], for the Torah of *ḥesed* that the Lord, may He be blessed, gave to Israel is eternal; for one who is not of them – it is nothing" (*Resisei Laylah*, par. 44, p. 86).

For the question of whether Jewish tradition ascribes value to any moral act that is not based on compliance with the laws of the Torah, see Moshe Halbertal, *Interpretive Revolutions in the Making: Values as Interpretive Considerations in Midrashei Halakhah* (Jerusalem: Magnes, 1997) 22–30 (Heb.); see also the sources set forth by Moshe Weiss, "'This Is the Book of the Generations of Adam,'" *Bikkurim* 2 (1985) 57–65 (Heb.). The idea of selection, in its extreme formulation by Rabbi Zadok, that completely negates the significance of the actions by "Og" (the righteous non-Jew) since he was not chosen by God, is somewhat reminiscent of predestination, and like other ideas in the teachings of Rabbi Zadok is related to sexuality. There is, in my mind, a faint resemblance between his positions and those of Paul in his epistles, but such a discussion would exceed the scope of the present article. For predestination, see David Flusser, *Jewish Sources in Early Christianity* (Tel Aviv: Sifriat Hapoalim, 1979) 318–19 (Heb.); Flusser, *The Judean Desert Scrolls and the Essenes* (Tel Aviv: Ministry of Defense Press, 1985) 39–43 (Heb.); Urbach, *The Sages*, 541–54, with a discussion of the positions in the rabbinic literature (see also Friedlander, *Pirke de Rabbi Eliezer*, 177, that presents the surprising stance that the choice of Israel was a matter of chance fate, and no more: "The lot of the Holy One, blessed be He, fell upon Abraham and upon his seed"); for the idea of chosenness in general, see the articles collected by Shmuel Almog and Michael Heyd, eds., *Chosen People Elect Nation and Universal Mission* (Jerusalem: Shazar, 1991) (Heb.); and for the sense of "chosenness" in the religious perception on the whole, see Mircea Eliade, *Myths, Dreams, and Mysteries*, Phillip Mairet, trans. (New York: Harper, 1960) 79–81.

It would seem for a moment that we hear in this recounting of the war with Og by Rabbi Zadok the argument of the innovators – the Reform and their like – who dared at that time to assert that "righteous ones" who engage in good deeds and have good thoughts are also to be found among the different nations and religions; and, according to this view, we, the members of the Jewish nation, must open up to them in order to learn spiritual paths from them, in a cooperative manner. Rabbi Zadok's response to this, by the vehicle of this story, is one of total negation, arguing that these good deeds by Gentiles have no true value outside the Jewish system of commandments, unless those "Og-righteous" were to convert, and would from this time on be called "Israel."

Thus we repeatedly learn the correctness of the insight by Zunz, who wrote more than a century and a half ago that the way in which the *haggadah* works is "[a mode of] action for the moment, and not for generations."[99] Consequently, all commentary on the *haggadah* is a sort of continuation of this great creative work, that in actuality tells one long story, with each of the themes in the Bible constituting a basis for the personal improvisation of each storyteller, in every generation. Every commentator is therefore, to a certain degree, a storyteller as well: an artist who continues the story of the Jewish *haggadah*; a storyteller who adapts this story from anew for his generation and the spiritual context in which he was raised, in accordance with the conditions of his environment. Thus acted the haggadists, the artists of the talmudic period with their fantastic imaginations; thus acted Maimonides, who restricted the narrative to its realistic dimensions, in accordance with his rationalistic method; thus acted his successors, who interpreted the talmudic tale as allegory; and thus acted the hasidic commentary of the nineteenth century, that contended with the Og story as a seemingly current narrative, a story that was intended to provide a response to those who maintained the existence of religious and spiritual manifestations among the non-Jews in which the Jews could join, and that could be integrated in the Jewish life of the people of Israel. The Og narrative is therefore an "elongated" story from every aspect.

Summary

The assumption that was the starting point for this article is that the interpretation of the haggadic story is itself a manner of retelling. The Og narrative was presented in this light as a sort of haggadic "shell story," from which each generation, through its singular interpretation, creates a story – either by direct

99 Leopold Zunz, *Die gottesdienstlichen Vortrage der Juden: historisch entwickelt* (Frankfurt a. M.: Kauffmann, 1892) 61 (see the additions by Chanokh Albeck in the Hebrew version: *Ha-Derashot be-Yisrael ve-Hishtalshalutan ha-Historit* [Jerusalem: Bialik Institute, 1974] 32).

continual addition, or by means of indirect "learned" interpretation – the suitable narrative improvisation necessary to present the narrative in its time and cultural environment.

From this point of departure, the article examined the convoluted metamorphoses of the Og narrative, from a very concise and quite marginal description of his character in the biblical narrative to the narratives of the modern period; from the expanded mythological form of the tale in the Babylonian Talmud, continuing with its presentation as a story expressing an allegoric idea in the medieval Jewish-Christian confrontation, and concluding with its transformation in the modern period into a partisan argument of the chosenness of Israel in the Orthodox ideology of hasidic Jewry.

We shall now summarize in short the permutations of the changing Og story: the king of Bashan, who is patently depicted in the Bible as a giant of realistic dimensions, and who was portrayed in a similar light by the sages of the midrash in the tannaitic period and by Josephus, became a figure of monstrous proportions in the amoraic exegeses (that appear in quite distinct fashion in the Babylonian Talmud), possibly under the influence of views that appear in the Apocrypha.

One "expansion" of his image was already delivered in the name of palestinian *amoraim*, but it is linked to the dimension of time (this "stretching" as was noted above, could also have sparked the fertile midrashic imagination for the physical stretching of his body, that would later turn him into a giant of nonrealistic dimensions): the exegetes maintained that Og was already alive in the time of the Flood, and survived as a "fugitive" from the war of the kings in the book of Genesis, and that he was the one who came and told Abraham about the captivity of his nephew Lot. Some even went so far as to maintain that Og was a descendant of those angels who came down to earth and had relations with the daughters of men. In a later addition, Og became Abraham's servant, and it is he who is Eliezer the servant of Abraham, who is known to us from Genesis.

In the Middle Ages Og returns to his human dimensions, and the commentators, both the rationalists and those who engaged in esoteric interpretations, struggled to explain these exaggerated expositions as allegory.

The exegesis in the *Zohar* and in the commentary by *Rashba* continue to expand the interpretive direction that presents Og as possessing spiritual merits. In the hands of the haggadic commentators in recent centuries, this direction split into two interpretive options, that share their portrayal of Og and Moses as occupying two sharply opposing poles: some refused to accept that this "wicked one" had any spiritual merits, and therefore oriented their writings so that those "rights" were mainly magic-demonic powers that Og inherited from his forefathers the angels who in primordial times had engaged in

relations with the daughters of men. Others sought to relate the story of Og and the story of his war with Moses as a battle between two completely righteous individuals, with the sole decisive advantage held by Moses in this struggle being his membership in Israel, the people that had been chosen by God as an act of Divine grace, with no rhyme or reason. Moses' victory is therefore the triumph of this conception of chosenness, that assumes that the Divine aid extended to Moses proves that the selection of Israel ensues only from the Divine love of Israel, with no apparent reason or cause.

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The Miracle of the Cruse of Oil

The Metamorphosis of a Legend

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A popular view among historians considers the famous Hanukkah story of the cruse of oil, which appears in the Talmud and seemingly also in the Scholium of *Megillat Taᶜanit*, as evidence of the determination of the Sages to erase the memory of the Hasmoneans.

A careful examination of the traditions about Hanukkah in the Scholium of *Megillat Taᶜanit* demonstrates, however, that the story, as it appears in the Babylonian Talmud, is a secondary form. The two extant versions of the Scholia offer different traditions in explaining the celebration of Hanukkah. Scholium O makes no mention of finding any oil and offers other reasons for the establishment of the festival. Scholium P does present, among other traditions, an early version of the story, which does not mention any miracle with regard to the finding of the oil. This same episode appears later in the Babylonian Talmud after it had evolved and crystallized, and when all other traditions had been rejected. The Babylonian Talmud is, in fact, the only source for the legend of the bit of oil that lasted eight days. The supernatural basis of this story, as well as its introduction as the only explanation for the celebration of Hanukkah, is a Babylonian manipulation, motivated by literary rather than historical purposes.

The Intent Behind the Story of the Cruse of Oil

The Babylonian Talmud[1] provides an explanation for the festival of Hanukkah based on a citation from *Megillat Taᶜanit*:[2]

1 *B.Šabb.* 21a. The version presented below is based on the edition of the Talmud printed in Venice in 1520. A selection of alternative versions is presented from the following manuscripts: Toronto, Friedberg 002-9 (Jerusalem, Jewish National and University Library, Institute of Microfilmed Hebrew Manuscripts [hereafter: IMHM], F 70583), hereafter: T; Oxford 366 (IMHM, F18347), hereafter: O; London Or. 5558 n\50 (IMHM, F6519-20), hereafter: L; Vatican 127 (IMHM, F8606), hereafter: V; Munich 95, hereafter: M.

2 *Megillat Taᶜanit* is a short Aramaic document from Second Temple times which lists some thirty-five days during the year on which fasting, and in some cases even delivering eulogies for the dead, is prohibited because of festive events and victories which occurred on these dates. On *Megillat Taᶜanit* and its commentary, the Scholium, see Vered Noam, *Megillat Taᶜanit: Versions, Interpretation, History* (Heb.) (Jerusalem: Yad Itzhak Ben Zvi, 2003). See also Noam, "The Scholion to *Megillat Taᶜanit*: Towards an Understanding of its Stemma" (Heb.), *Tarbiz* 62 (1993) 59–99, and the bibliography in the footnotes, 55–58; Noam, "Two Testimo-

מאי חנוכה [דת"ר][3] בכ"ה בכסליו[4] יומי[5] חנוכ׳[6] תמניא [אינון][7] דלא למספד בהון[8] [ודלא להתענות בהון].[9]

What is the reason for Hanukkah? [For our Rabbis taught:] On the twenty-fifth of Kislev <commence> the days of Hanukkah, which [are] eight, on which one may not eulogize [and may not fast].

The Talmud immediately follows this citation with an explanation involving the famous tale of the miracle of the cruse of oil:

שכשנכנסו יוונים להיכל טמאו כל השמנים שבהיכל, וכשגברה מלכות בית חשמונאי ונצחום, בדקו ולא מצאו אלא פך אחד של שמן[10] שהיה מונח בחותמו של כ"ג, ולא היה בו אלא להדליק[11] יום אחד. נעשה בו נס והדליקו ממנו ח׳ ימים. לשנה אחרת קבעום ועשאום[12] ימים[13] טובים בהלל והודאה.[14]

For when the Greeks entered the Temple, they defiled all the oils in the Temple, and when the Hasmonean dynasty prevailed against and defeated them, they made search and found only one cruse of oil (T: a small cruse) which lay with the seal of the High Priest, but which contained sufficient [quantity] only for one day's kindling; yet a miracle was wrought therewith and they kindled [the candelabrum] from it for eight days. The following

nies to the Route of Transmission of *Megillat Taᶜanit* and the Source of the Hybrid Version of the Scholion" (Heb.), *Tarbiz* 65 (1996) 389–416. For a general review, cf. Joseph Tabory, *Jewish Festivals in the Time of the Mishnah and Talmud* (Heb.) (Jerusalem: Magnes Press of the Hebrew Univ., 1995) 307–22 and the bibliography cited there. The critical edition of the *Megillah* and its Scholium which has served scholarship until now is that of Hans Lichtenstein, "Die Fastenrolle: Eine Untersuchung zur jüdisch-hellenistischen Geschichte," *HUCA* 8–9 (1931–32) 257–351. On the merits and shortcomings of this edition, see Noam, "Scholion," 59–60, and 92, n.155. The passages cited below from the *Megillah* and its Scholia are based on my new edition, Noam, *Megillat Taᶜanit*.

3 [דת"ר] corruption. In the manuscripts: דתניא, דתנן.

4 בכסליו] ביה in T; missing in L.

5 יומי] missing in T; יום in L.

6 חנוכ׳] in the other extant manuscripts: חנוכת, חנוכה, חנכה.

7 אינון] אלין in M; אילין in V; missing in O T L.

8 בהון] missing in T; unreadable in L.

9 ודלא להתענות בהון] This is an erroneous addition. Missing in M V T; unreadable in L.

10 של שמן] שמן in M; מלא שמן in V; missing in O; קטן in T; קטן שלשמן in L.

11 אלא להדליק] אלא כדי להדליק in M; אל׳ כדי להדל׳ in V; שיעור להדליק אלא in O; להדליק אלא in T; [ ] להדליק in L.

12 ועשאום] missing in M T.

13 ימים] שמנ׳ ימים in V; שמונה ימים in T; ח׳ ימי׳ in L.

14 טובים בהלל והודאה] missing in L.

year they designated and appointed them [the days] a Festival with [the recital of] Hallel and thanksgiving.

Scholars have been puzzled by this explanation which the Sages give for Hanukkah, an explanation not found elsewhere in any of the non-rabbinic sources. According to 1 Maccabees, the festival celebrates the dedication (*hanukkah*, חנוכה) of the Temple and the Temple vessels – the candelabrum (*menorah*), the altar of incense, and the table – and it places particular emphasis on the consecration (also *hanukkah*, חנוכה) of the burnt-offering altar, which was defiled and rebuilt by the Hasmoneans.[15] 2 Maccabees associates Hanukkah with the eight-day Feast of Tabernacles,[16] and it too emphasizes the dedication of the Temple, the consecration of the altar, and the renewal of the sacrifices on the altar.[17] Josephus as well relates Hanukkah to the purification of the Temple by Judah Maccabee. He states that the festival is called φῶτα – "Lights" and offers his own reason for this name,[18] an indication that he is unfamiliar with the miraculous kindling of the candelabrum in the Temple. These descriptions in Josephus and 1 and 2 Maccabees present the dedication of the Temple as the result of the military victories described previously,[19] thus indicating that Hanukkah commemorates a military triumph as well as a religious rededication. This aspect of the festival is reflected in the aforementioned legend too, represented by the laconic phrase, "when the Hasmonean dynasty prevailed against and defeated them."[20] In view of the paucity of information about the Hasmoneans in rabbinic literature in general, the story of the cruse of oil stands out as almost the only description offered by the Sages of the high point in the Hasmonean revolt, an event so momentous that it led to the establishment of a festival that was celebrated for all generations. It is a commonly-held view among historiographers that the story of the cruse of oil, which appears both in the Talmud and in the Scholium of *Megillat Taʿanit*, is but one of many examples of what may conceivably be an intent on the part of the Sages to wipe out all traces of the Hasmoneans.[21] Accordingly, the Sages replaced the historical

15 1 Macc 4:36–60.

16 2 Macc 1:9, 18; 10:6. The author includes the eighth day as part of Sukkot, unlike the later halakhic ruling of the Sages which stressed that it was "a festival unto itself" (*b.Sukkah* 47a, 48a, and parallel sources).

17 2 Macc 10:1–6.

18 *Ant.* 12:325.

19 1 Macc chap. 3, 4; *Ant.* 12:287–315. Note especially Judas' words (1 Macc 4:36, and the parallel in *Ant.* 12:316): "Now our enemies have been defeated. Let us go purify the sanctuary and restore it."

20 This aspect is emphasized in the ritual texts of Hanukkah, such as *Al Hanisim* and *Hanerot Halalu*; see n. 46 below.

21 One of the main twentieth-century proponents of the theory involving the differences and

reality of the Hasmonean revolt with an incidental, marginal anecdote and, in place of the human victory, substituted a miraculous occurrence that makes no mention of the Hasmoneans themselves.[22] During the middle of the twentieth century a shift occurred: Jewish scholars, influenced by the Zionist revival, took pains to prove that the Sages had in fact lent their support to, and identified with, the Hasmoneans.[23] As to the story of the cruse of oil, Alon[24] argues that this legend had its origin in the Scholium of *Megillat Taᶜanit*, from where it was introduced into the Babylonian Talmud, and that its original context in the Scholium of *Megillat Taᶜanit*, following the question regarding the eight-day duration of Hanukkah, indicates that the story was essentially intended to explain the length of the festival – eight days – and not the reason that the festival was instituted.

However, the argument over the intent behind the tale of the cruse of oil is fundamentally flawed. Neither school of thought was familiar with the story's original literary-textual foundation. Careful scrutiny of the traditions regarding Hanukkah that appear in the Scholium of *Megillat Taᶜanit* raises questions about most of the information that scholarship has relied upon until now: The story, as it appears in the Babylonian Talmud, is apparently a secondary rendering, which is not based on the Scholium of *Megillat Taᶜanit*. It is evident from its original form and context that the episode was never intended to

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the hostility that existed between the Hasmonean dynasty and the Pharisaic sages is Victor Aptowitzer, *Parteipolitik der Hasmonäerzeit im rabbinischen und pseudoepigraphischen Schrifttum* (Vienna: Verlag der Kohut-Foundation, 1927). A description of the history of scholarship in this regard is presented by several scholars who reject this theory. For a review of the main arguments and counterarguments see: "Did the Jewish People and its Sages Cause the Hasmoneans to be Forgotten?" in Gedaliah Alon, ed., *Jews, Judaism and the Classical World* (Jerusalem: Magnes Press of the Hebrew Univ., 1977) 1–17. In the view of Yehoshua Efron, researchers over the generations were influenced by the predominating attitudes of their day, which distorted their conclusions. He reviewed the research in this regard in an attempt to determine the different attitudes prevailing at different periods of time: "The Hasmonean Revolt in Modern Historiography," in Yehoshua Efron, *Research on the Hasmonean Period* (Heb.) (Tel-Aviv: Hakibbutz Hameyuḥad, 1980) 15–40. For a new approach to the matter, and a description of the research conducted over the last few decades, see Daniel R. Schwartz, "On the Question of the Opposition of the Pharisees to the Hasmonean Dynasty" in Uriel Rappaport and Yisrael Ronen, eds., *The History of the Hasmonean State against the Background of the Hellenistic Era* (Heb.) (Jerusalem, Tel-Aviv: Yad Itzhak Ben Zvi and Ha'universiṭah Hapetuchah, 1994) 442–53; Isaiah Gafni, "The Hasmoneans in Rabbinic Literature," in David Amit and Hanan Eshel, eds., *The Hasmonean Era* (Heb.), *Idan* 19 (Jerusalem: Yad Itzhak Ben Zvi, 1996) 261–76.

22 For an analysis of this approach to rabbinic sources dealing with the Hasmoneans, see the bibliography in Efron, "Hasmonean Revolt," n. 84.

23 See Alon, "Did the Jewish People," and Efron, "Hasmonean Revolt," and the bibliography in Schwartz, "Opposition," 442–43, 452–53. For the reasons for the change of direction in the research, see Schwartz.

24 Above, n. 21.

replace historical events with miraculous ones, as claimed by one school of researchers, nor was it originally intended to explain the length of Hanukkah, as claimed by the other school. More importantly, an examination of the story in its original context, alongside the other rabbinic traditions regarding Hanukkah that appear in the Scholium, indicates that it would be a mistake to regard it as the only representation of the attitude of the Sages to Hanukkah and, indirectly, to the Hasmoneans.

Traditions Regarding Hanukkah in the Scholium

The Scholium, the Hebrew commentary on *Megillat Taᶜanit*,[25] explains the nature and times of the events listed in this ancient text. The explanatory materials include historical stories, homilies, and *aggadot* relating to the festivals listed in the Scroll. From my own research on the Scroll and its Scholium,[26] it has become abundantly clear to me that the Scholium appearing in printed editions is not a single treatise, but a combination of two separate works, of two different versions of the Scholium. One version, Scholium O, is preserved in the Oxford manuscript in the Bodleian Library, Michael 388 (Neubauer Catalogue no. 867.2); the other version, Scholium P, is preserved in the Parma manuscript, Palatine Library, De Rossi Collection, no. 117.[27] The two Scholia differ in content, structure and style. Each of these two original versions contains ancient authentic material alongside later meaningless formulations of no intrinsic worth. Most of the corruptions, discordances and later reworkings that appear in the printed editions of the Scholium come from a secondary, medieval hybridization of the two versions, hereafter referred to as the "hybrid version." The hybrid version is what appears in all of the other manuscripts, and it is this version that also made its way into the printed editions and was the source used by nineteenth-century and early twentieth-century scholars. It also left its misleading imprint on the Lichtenstein edition,[28] used by scholars over the last seven decades. The absence in the scholarship of the most basic knowledge about the way the work evolved and how it was transmitted left its mark also on the tale of the cruse of oil. Reconstructing the Scholia's original traditions regarding Hanukkah, and removing from these the impediment of the hybrid version, sheds new light on the evolution of the story of the cruse of oil in particular, on the traditions regarding Hanukkah in rabbinic literature in general, and even on the connection between the Babylonian Talmud and the two versions of the Scholium of *Megillat Taᶜanit*.

25 For the literature on the subject, see n. 2 above.

26 Noam, *Megillat Taᶜanit*; Noam, "Scholion"; Noam, "Two Testimonies."

27 For a description of the MSS, their nature and interrelationships, see Noam, "Scholion," 60ff.

28 Above, n. 2.

The chart below presents the two original versions of the Scholium, as well as the later hybrid version, which is based on the Cambridge manuscript, Cambridge University Library, Add. 648/9. The text of *Megillat Ta*ᶜ*anit* that is explained in the Scholium appears in bold letters at the beginning of each of its versions. The story of the cruse of oil, as presented in each of the Scholia, is highlighted with an alternate typeface in the Hebrew text and *italicized* in the English translation. Symbols used in the Hebrew represent the following: ++, word/s within were added between the lines of the manuscript; [[ ]], a tear in the manuscript, supplemented by the author of this article; ᵒ, unclear letter in the manuscript; { }, erased in the manuscript.

	Scholium P	*Scholium O*	*Hybrid Version (H)*	
1	**בעשרים וחמשה בו**	**בעשרים וחמשה ביה**	**בעשרין וחמשה ביה**	1
2	**חנכת יומין תמניא**	**יומי חנוכה**	**יום חנוכה תמניא יומין**	2
3	**ודלא למספד**	**דלא למספד**	**דלא למספד**	3
1	מפני שטמאו גוים		כשנכנסו גוים להיכל	1
2	את בית המקדש		טמאו כל השמנים שבהיכל	2
3	וכשתקפה מלכות		וכשגברה יד	3
4	בית חשמונאי		בית חשמונאי	4
5	בדקוהו ומצאו בו		ונצחום בדקו ולא מצאו	5
6	שמן טהור		אלא פך אחד	6
7			שהיה מונח בחותמו	7
8			של כהן גדול שלא נטמא	8
9			ולא היה בו {אלא להדליק}	9
10			+להדליק אלא+	10
11			יום אחד ונעשה בו נס	11
12	והדליקו בו את הנרות		והדְליקו ממנו שמנה ימים	12
13	כל אותן ימים		לשנה אחרת	13
14	שהדליקו בהם את הנרות			14
15	עשאום יום טוב		קבעום שמנה ימים טובים	15
16			ומה ראו לעשות חנוכה	16
17			שמנה ימים	17
18	והלא חנכה שעשה	בימים הראשונים חנᵒוᵒכᵒת	והלא חנוכה שעשה	18

	Scholium P	*Scholium O*	*Hybrid Version (H)*
19	משה אינה	משה	משה במדבר לא עשה
20	אלא שבעה		אלא שבעת ימים
21			שנאמר ומפתח אהל מועד
22			לא תצאו שבעת ימים וגו׳
23	שנ׳ ויהי המקריב		ואומר ויהי המקריב
24	ביום הראשון את קרבנו		ביום הראשון את קרבנו וגו׳
25	ובשביעי בשבת	ז°את חנוכת המזבח	ובשביעי
26	הקריב אפרים		הקריב אפרים
27	והלא חנכה		וכן מצינו בחנוכה
28	שעשה שלמה אינה אלא	משלמה ואילך	שעשה שלמה שלא עשאה
29	שבעה	חנוכת משה וחנוכתו	אלא שבעת ימים
30	שנ׳ כי חנכת המזבח	שנ׳ כי חנוכת המזבח	שנ׳ כי חנוכת המזבח
31	שבעת ימים	שבעת ימים	עשו שבעת ימים
32	והחג שבעת ימים		והחג שבעת ימים
33	מה ראו לעשות זו		ומה ראו לעשות חנוכה זו
34	שמונה	ושמונה משנטל בית הלבנון	שמונה ימים
35			אלא בימי מלכות יון
36		חנוכת בית חשמונאי	נכנסו בית חשמונאי
37		לדורות	להיכל
38		ולמֿה נוהגת לדורו[[ת]]	ובנו את המזבח
39		שעשאום בצאתם מצרה	וסדוהו בסיד ותקנו בו
40		לרוחה ואמרו בה הלל	כלי שרת והיו מתעסקין בו
41		והדליקו בה נרות בטהרה	שמנה ימים ומה ראו
42		שכשנכנסו יונים להיכל	להדליק את הנרות
43	אלא בימי יון	טמאו כל הכלים	אלא בימי מלכות יון
44	נכנסו בני חשמו+נאי+	ולא היה שמן במה להדליק	שנכנסו בני חשמונאי
45	להר הבית ושבעה שפודין	וכשגברו מלכות	להיכל שבעה שפודים
46	של ברזל היו	בית ח°שמונאי° מצאו פך	של ברזל
47	בידיהם וחברום בבעץ	אחד בחותמו של כהן גדול	בידם וחפום בעץ

continues

	Scholium P	Scholium O	Hybrid Version (H)	
48	והיו מתעסקין בהם	ונעשה נס והדליקו ממנה	והדליקו בהם את הנרות	48
49	כל שמנה	עד שמונה ימים		49
50	ומה ראו לגמור בהם	ומצאו מזבח סתור ותקנוהו	ומה ראו לגמור בהן	50
51		כל שמנה וכלי שרת		51
52	את ההלל	ולכך נוהגת שמונה	את ההלל	52
53	ללמדך שכל תשועה	והיתה ח◦נכת המזב[[ח]]	אלא שכל תשועה	53
54	ותשועה שעשה		ותשועה שהקב״ה	54
55	הק׳ב׳ה׳ לישראל		עושה להם לישראל	55
56	הן מקדימין לפניו		היו מקדימין לפניו	56
57	בהלל		בהלל בשירה	57
58	ובשבח		ובשבח ובהודאה	58
59	וכן הוא אומ׳ בספר עזרא		כענין שנ׳	59
60	ויענו כל העם בהלל		ויענו בהלל	60
61	ובהודות ליי׳ כי טוב		ובהודות ליי׳ כי טוב	61
62	כי לעולם חסדו על ישראל		וגומ׳	62
63	וכל העם הריעו תרועה			63
64	גדולה בהלל ליי׳ על הוסד			64
65	בית יי׳ ואומ׳ ליי׳ הישועה			65
66	על עמך ברכתך סלה			66
67	לקב״ה לעשות לנו			67
68	נסים ונפלאות ולנו			68
69	להללו ולברכו			69
70	שנ׳ על עמך ברכתך סלה			70
71	מצות נר חנכה נר אחד		מצות חנוכה נר	71
72	לכל בית		איש וביתו	72
73	והמהדרין נר אחד לכל נפש		והמהדרין נר לכל נפש ונפש	73
74	והמהדרין מן המהדרין וכו׳		והמהדרין מן המהדרין	74
75	כדאיתא בבמה מדליקין		בית שמאי אומרים	75

	Scholium P	Scholium O	Hybrid Version (H)	
76			יום ראשון מדליק שמנה	76
77			מכאן ואילך פוחת והולך	77
78			ובˮה אומרים יום ראשון	78
79			מדליק אחד מכאן +ואילך+	79
80			מוסיף והולך	80
81			שני זקנים היו בצידן	81
82			אחד עושה כדברי בˮש	82
83			ואחד עושה כדברי בˮה	83
84			זה נותן טעם לדבריו	84
85			וזה נותן טעם לדבריו	85
86			זה אומר כפרי החג	86
87			וזה אומר מעלין בקדש	87
88			ואין מורידין	88
89			מצות הדלקתה	89
90			משתשקע החמה	90
91			עד שתכלה רגל מן השוק	91
92			ומצוה להניחה על פתח	92
93			ביתו מבחוץ ואם היה	93
94			דר בעליה מניחה בחלון	94
95			הסמוכה לרשות הרביʼ	95
96			ואם מתירא מן הגוים	96
97			מניחה על פתח ביתו	97
98			מבפנים ובשעת הסכנה	98
99			מניחה על שלחנו ודיו	99
1	On the twenty-fifth day of it [Kislev]	On the twenty-fifth day of it [Kislev]	On the twenty-fifth day of it [Kislev]	1
2	[commence] the eight days of Hanukkah	[commence] the days of Hanukkah	[commence] the day [sic] of Hanukkah, which are eight days	2
3	and [on which] eulogizing the dead is forbidden	[on which] eulogizing the dead is forbidden	[on which] eulogizing the dead is forbidden	3

continues

	Scholium P	Scholium O	Hybrid Version (H)	
1	*Because the heathens defiled*		*When the heathens entered the Temple*	1
2	*the Temple.*		*they defiled all the oils in the Temple.*	2
3,4	*And when the Hasmonean dynasty prevailed,*		*And when the Hasmoneans overpowered*	3,4
5	*they searched it and found in it*		*and defeated them, they made search and found*	5
6	*pure oil*		*only one cruse*	6
7			*which lay with the seal*	7
8			*of the High Priest which was not defiled*	8
9			*but which contained sufficient*	9
10			*for kindling only*	10
11			*for one day and a miracle was wrought therewith*	11
12	*and they kindled the lights therewith.*		*and they kindled from it for eight days.*	12
13	*All of those days*		*The following year*	13
14	*on which they kindled the lights*			14
15	*they appointed a festival.*		*they designated them [the days] an eight-day festival.*	15
16			And why did they determine to celebrate Hanukkah	16
17			for eight days?	17
18	And was not the dedication [חנוכה] performed	And in former days the dedication [חנוכה]	And was not the dedication [חנוכה] performed	18
19, 20	by Moses only seven [days]?	by Moses	by Moses in the desert only seven days?	19, 20
21, 22			As is stated, "And ye shall not go out from the door of the tent of meeting for seven days" etc.	21, 22

	Scholium P	*Scholium O*	*Hybrid Version (H)*	
23, 24	As is stated: "And he that presented his offering the first day"		And it says: "And he that presented his offering the first day," etc.	23, 24
25	And on the seventh day, on the Sabbath,	"This was the dedication of the altar"	And on the seventh [day]	25
26	Ephraim presented his offering.		Ephraim presented his offering.	26
27	And was not the dedication		And so have we found that the dedication	27
28	performed by Solomon only	From Solomon onward	performed by Solomon was	28
29	seven [days]?	the dedication of Moses [was celebrated] and also his [Solomon's] dedication.	only seven days.	29
30, 31	As is stated: "for [they observed] the dedication of the altar seven days	As is stated: "for [they observed] the dedication of the altar seven days"	As is stated: "for they observed the dedication of the altar seven days	30, 31
32	and the feast seven days."		and the feast seven days."	32
33	Why did they choose to celebrate this one		And why did they choose to celebrate this dedication	33
34	for eight [days]?	And eight [days] when the House of Lebanon was taken(?)	for eight days?	34
35			Because in the days of the Greek kingdom	35
36		The dedication of the Hasmoneans	the Hasmoneans entered	36
37		[was to be celebrated] for [all] generations.	the Temple	37
38		And why is it celebrated for all generations?	and built the altar	38
39		For they observed them when they emerged from distress	and covered it in plaster and repaired	39
40		to relief and they recited on it the Hallel	the service vessels and they were occupied with it	40

continues

	Scholium P	Scholium O	Hybrid Version (H)	
41		And they kindled the lights on it in purity.	for eight days. And why did they determine	41
42		*For when the Greeks entered the Temple*	to kindle the lights?	42
43	Because in the days of Greece	*they defiled all the vessels*	Because in the days of the Greek kingdom	43
44	the Hasmoneans entered	*and there was no oil in what to kindle.*	when the Hasmoneans entered	44
45, 46	the Temple Mount and seven iron spits	*And when the Hasmonean dynasty prevailed they found one cruse*	the Temple, seven iron spits	45, 46
47	did they have in their hands, and they (joined) [overlaid] them with tin	*with the seal of the High Priest*	did they have in their hand and they overlaid them with tin	47
48	and they were occupied with it	*And a miracle was wrought and they kindled [the lights] from it*	and kindled the lights therein.	48
49	all eight [days].	*Up to eight days.*		49
50	And why did they determine to finish/recite on them	And they found a demolished altar and they repaired it	And why did they choose to finish/recite on them	50
51		all eight [days] and the service vessels		51
52	the Hallel?	And it is therefore celebrated for eight [days].	the Hallel?	52
53	To teach that for each and every	And there was the dedication of the altar.	Because for each and every	53
54	salvation that the Almighty		salvation that the Almighty	54
55	wrought in Israel		wrought in Israel	55
56	they greet Him		They would greet Him	56
57	with Hallel		with Hallel, with song	57
58	and with praise.		and with praise and with thanksgiving.	58
59	And thus is it stated in the Book of Ezra:		As the matter is stated:	59

	Scholium P	*Scholium O*	*Hybrid Version (H)*	
60	"And the entire nation sang one to another in praising		"And they sang one to another in praising	60
61	and giving thanks unto the Lord: 'for He is good,		and giving thanks unto the Lord: 'for he is good,'"	61
62	for his mercy endureth forever toward Israel.'		etc.	62
63	And all the people shouted			63
64	with a great shout when they praised the Lord, because the foundation			64
65	of the house of the Lord was laid." And it states: "Salvation belongeth unto the Lord;			65
66	Thy blessing be upon Thy people. Selah."			66
67	It is for the Almighty to perform for us			67
68	miracles and wonders and it is for us			68
69	to praise and bless Him			69
70	As is stated: "Thy blessing be upon Thy people. Selah."			70
71	The precept of Hanukkah [demands] one light		The precept of Hanukkah [demands] one light	71
72	for each household		for a man and his household	72
73	and the zealous [kindle] a light for each member [of the household]		and the zealous [kindle] a light for each and every member [of the household]	73
74	and the extremely zealous, etc.,		and the extremely zealous	74

continues

	Scholium P	*Scholium O*	*Hybrid Version (H)*	
75	as is written in [the second chapter of *b.Šabbat*] *Bameh Madlikin* – "With what may we kindle [the Sabbath lights]?"		Bet Shammai maintain:	75
76			On the first day eight [lights] are kindled	76
77			and thereafter they are gradually reduced.	77
78			And Bet Hillel say: On the first day	78
79			one is kindled and thereafter	79
80			they are progressively increased.	80
81			There were two old men in Sidon,	81
82			One observed according to Bet Shammai	82
83			And the other according to Beth Hillel.	83
84			The former gave a reason for his action	84
85			and the latter gave a reason for his action.	85
86			The former stated that it should correspond to the bullocks of the Festival	86
87			and the latter stated, because we promote [in matters of] sanctity	87
88			but do not reduce.	88
89			It is incumbent to kindle it	89
90			from sunset	90
91			until there is no wayfarer in the street.	91

	Scholium P	*Scholium O*	*Hybrid Version (H)*	
92			And it is incumbent to place it by the door	92
93			of one's house on the outside; and if one	93
94			dwells in an upper chamber he places it at the window	94
95			nearest the street.	95
96			And if one is afraid of the Gentiles	96
97			one places it at the door of one's house	97
98			on the inside, and in times of danger	98
99			it is sufficient to place it on the table.	99

Each of the two original versions of the Scholium (P, O) incorporates several traditions regarding Hanukkah, while the hybrid version contains all of them. The following are the topics appearing in each of the versions:

Scholium P	*Scholium O*	*Hybrid Version*
The miracle of the cruse of oil (1–15)	A comparison with the dedications of Moses and Solomon (18–34)	*The miracle of the cruse of oil* (1–15)
A comparison with the dedications of Moses and Solomon (18–34)	*The miracle of the cruse of oil* (36–49)	A comparison with the dedications of Moses and Solomon (16–34)
	The repairing of the altar (50–53)	The repairing of the altar (35–41)
The iron spits (43–49)		The iron spits (41–48)
Why did they determine to recite the Hallel? (50–70)		Why did they determine to recite the Hallel? (50–62)
The manner of kindling the lights (71–75)		The manner of kindling the lights (71–99)

From this point onward we will discuss each unit separately and then explore the way the different units were combined. In light of this analysis, we will discuss the story of the cruse of oil, its origin, the way it evolved, and its place among the other units in the Scholia.

Units of the Scholia and Parallel Versions

the dedications of moses and solomon

The two versions of the Scholium compare the Hasmonean dedication to Moses' dedication of the Tabernacle and Solomon's dedication of the Temple. Scholium P asks about the difference between the Hasmonean dedication, which was celebrated for eight days, and the other two dedications, which lasted seven days: "Why did they determine to celebrate this one for eight [days]?" (lines 33–34). Against the background of all biblical consecrations of the Tabernacle and the Temple, which lasted seven days,[29] the duration of eight days of Hanukkah is indeed puzzling. In the books of Maccabees it is never clearly explained. 2 Maccabees (10:6; 1:9, 18) does create a connection between the festival of Tabernacles and Hanukkah, but the author does not state explicitly that the duration of the biblical festival is the reason for the duration of the Hasmonean one. Scholarship has offered different solutions to this riddle,[30] but it seems that the historical truth behind the eight days of Hanukkah is still rather vague. Scholium P's answer to this question appears in the next unit, in the story of the iron spits: "Because in the days of Greece the Hasmoneans entered . . . and they were occupied with it all eight [days]" (lines 43–49). In other words, the erecting of a new candelabrum for the Temple out of iron bars – perhaps fashioning it out of their own weapons (see below) – took eight days, and therefore the dedication by the Hasmoneans lasted eight days and not seven.

Apropos the mention of the dedication of the Tabernacle in the desert, Scholium P cites verses from the Bible as evidence that the dedication lasted seven days: "And he that presented his offering on the first day . . . And on the seventh day, on the Sabbath, Ephraim presented his offering" (lines 23–26). These verses deal with the presents brought by the chieftains of the tribes following the dedication of the Tabernacle (Numbers 7:12). It is surprising that the Scholium cites these verses as the source for the seven days of the dedication of the Tabernacle, rather than citing the biblical verses that deal with

29 See Lev 8:33–35; 1 Kgs 8:65; 2 Chr 7:9.

30 Tabory, *Jewish Festivals*, 370 n.9; 375 n.24 lists a comprehensive bibliography. See his own suggestion (374) with reference to the purification and consecration of the altar and the Temple in the days of Hezekiah, which lasted eight days.

the seven days of consecration (מילואים) (see Lev 8:33–35). The presentation of the offerings of the chieftains lasted *twelve days* (see Num 7:10–88), and according to rabbinic tradition, did not coincide at all with the days of consecration. Even more surprising is the mention of the presentation of the offering of Ephraim on the seventh day. Since the chieftains continued the presentations of their offerings on the days after Ephraim's offering, how does the day on which Ephraim presented his offering serve as evidence that the dedication of the Tabernacle lasted seven days? In this regard the hybrid version (lines 21–22) offers an additional verse that does not appear in the other versions of the Scholium: "And ye shall not go out from the door of the tent of meeting seven days" (Lev 8:33), which refers to the seven days of consecration. Perhaps the hybrid version is preserving the original source of P, or perhaps this is a later supplement.

Mention of the dedication of the chieftains in Scholium P remains unclear. However, several connections between the offerings of the chieftains and Hanukkah may be found in various sources. The paragraphs narrating the offerings of the chieftains are read from the Torah in the synagogue during Hanukkah, thus giving them an important place in the laws of the festival.[31] A *midrash* involving the commandment given to Aaron to light the candelabrum in the Tabernacle (Num 8:1–3) associates the Hasmonean Hanukkah with Aaron's sorrow at not presenting any offering of his own at the dedication of the chieftains.[32] A different *midrash*, which completely negates the plain meaning of the biblical text, asserts that work on the Tabernacle was completed on Hanukkah.[33] Furthermore, in the same manner that the Scholium mentions the offering of Ephraim on the seventh day apropos the mention of the *seven days* of the dedication of the Tabernacle, there is a *midrash* that connects the presentation of Manasseh's offering on the *eighth* day with the *eight-day* Hasmonean festival of Hanukkah.[34] In addition, the wording in the Scholium, "on the seventh day, on the *Sabbath*, Ephraim presented his offering" alludes to yet another *midrash*, according to which the seventh day of the offering of the

31 *M.Meg.* 3:6

32 For the reference see Louis Ginzberg, *The Legends of the Jews* (7 vols.; Philadelphia: Jewish Publication Society, 1946) 6:79 n.420.

33 *Pesikta Rabbati* 6 (ed. Meir Friedmann [Vienna: self-published, 1880] 24a); *Midrash Tanhuma*, *Pekudei* 11; *Midrash Tanhuma* (ed. Solomon Buber [Vilna: Romm, 1885]) *Pekudei* 6, p. 130; *Bemidbar Rabbah*, *Naso* 13.1 (51a).

34 With regard to the verse, "On the eighth day Gamaliel the son of Pedahzur, chieftain of the children of Manasseh," *Midrash Tanhuma* in *Naso*, 29 begins its homily, "Let our master teach us: A Hanukkah light. . . ." This passage is also found in *Pesikta Rabbati* and in the *She'iltot*, and the surprising *halakhah* that it contains with regard to kindling with a used candle is dealt with at length in the scholarly literature. See Victor Aptowitzer, "Untersuchungen zur Gaonäischen Literatur," *HUCA* 8–9 (1931–32) 383–95.

chieftains occurred on the Sabbath, and the offering of Ephraim suspended the Sabbath;[35] however, it is unclear how this *midrash* relates to the context under discussion.

As to Scholium O, the text of the Oxford manuscript is very fragmented and corrupt, thus making it difficult to reconstruct the underlying original version. Perhaps Scholium O intended to offer a list of the different Hanukkahs that had been celebrated since the "former days" (see line 18), all of which had been discontinued, with the exception of the Hasmonean Hanukkah: "And in former days the dedication by Moses . . . From Solomon onward the dedication of Moses [was celebrated] and [also] his [Solomon's] dedication . . ." (lines 18–29). These Hanukkahs were discontinued, but "the dedication of the Hasmoneans [was to be celebrated] for [all] generations." (lines 36–37). In contrast to Scholium P, Scholium O draws an analogy between the Hasmonean dedication and the dedications of Moses and Solomon to *explain* rather than to *pose a question* about the eight days of the Hasmonean Hanukkah. Following this explanation, Scholium O offers no further explanations for the number "eight" (in contrast to Scholium P), as the analogy is in itself the explanation. It would appear that Scholium O finds an allusion to the eight days in the mention of the number "eight" appearing in the description of Solomon's dedication of the House of Lebanon. The vague, corrupted sentence in Scholium O, "And eight [days] when the House of Lebanon was taken(?) (line 34), may be a vestige of an explanation for eight days, since the verses in the Bible relating to Solomon's dedication also mention an "eighth day": "And on the *eighth* day they held a solemn assembly; for they kept the dedication of the altar seven days, and the feast seven days . . . Thus Solomon finished the house of the Lord, and the king's house . . ." (2 Chronicles 7:9–11); "On the *eighth day* he sent the people away . . ." (1 Kings 8:66).[36] Perhaps it was the intention of Scholium O to find support for eight days in the eight days of Solomon's dedication. Possibly, it was connecting the "eighth day" appearing in the citation to the dedication of the "king's house" referred to in 2 Chronicles (7:11), which may have taken place on the eighth day, and thus the mention of the "House of Lebanon" (i.e., the king's house) in the Scholium.[37] But it is also conceivable that the "House of Lebanon" mentioned here is a metaphor for the Temple itself, as is commonly found in the *midrash*.[38] 2 Maccabees lends support to

35 *Tanhuma*, *Naso*, 28; *Bemidbar Rabbah*, *Naso* 14.1 (57b); *b.Moᶜed Qaṭ*. 9a (see the pseudo-Rashi commentary, regarding the words "and an individual offering").

36 According to 2 Chronicles, he sent the people away only on the twenty-third of the month. See *b.Moᶜed Qaṭ*. 9a; *Berešit Rabbah* 35 (eds. Julius Theodor and Chanoch Albeck [Jerusalem: Wahrmann, 1965] 332.

37 If so, perhaps it should be emended to: when the house of Lebanon was *completed* [משנשלם].

38 Perhaps the citation of the verse, "This was the dedication-offering of the altar" in the context

this hypothesis and also offers an important parallel comparison with the dedications of Moses and Solomon. The prophecy, attributed to Jeremiah, addressed to the exiles on their way to Babylon includes the following:

> Unknown shall the spot be [the spot where the tent of meeting, the ark and the altar of incense were hidden, upon the exile to Babylon] until the Almighty gathers the people together again, and mercy come; then indeed shall the Lord disclose these things, and the glory of the Lord shall be seen, even the cloud, *as in the days of Moses it was visible, and as when Solomon prayed that the place might be consecrated with solemn splendor*. It was also narrated how he in his wisdom, sacrificed *at the dedication and completion of the Temple*; as *Moses* prayed to the Lord, and fire descended from heaven . . . so *Solomon* also prayed and the fire descended and burned up the burnt-offerings . . . *and likewise, Solomon too kept the eight days*. (2 Macc 2:8–10, 12)

These verses compare the future redemption of the exiles with the dedication of Moses and the dedication of Solomon, while verse 12 notes: "and likewise, Solomon *too* kept the *eight days*." It would appear that the words "likewise" and "too" (ωσαυτως, και) allude to a comparison of the eight-day dedication of the Temple by Solomon with the eight-day dedication of the Tabernacle by Moses, according to the author of 2 Maccabees. This passage in 2 Maccabees deals with a fire coming down from heaven both for Solomon and for Moses, and the Pentateuch states that after the seven days of consecration, precisely "on the eighth day," there came forth "a fire from before the Lord . . . upon the altar" (Lev 9:1, 24). It would appear, as already noted by scholars, that underlying the great emphasis on eight days in this passage is the eight-day Hasmonean Hanukkah.[39]

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of the dedication by Moses was also intended to offer grounds for the eight days of Hanukkah from the eight days of consecration by Moses. What appears in the extant Scholium O may conceivably be a remnant of an association made in the original Scholium O between the *eighth* day of consecration and the last day of the presentation of the offerings of the chieftains, which is the day of "the dedication-offering of the altar, on the day when it was anointed." It is this particular portion of the Torah that is customarily read on the eighth day of Hanukkah. The sages, however, tended to identify the eighth day of consecration specifically with the *first* day of the chieftains' offerings.

39 See for example the editions of Abraham Kahana, *Hasefarim Haḥiṣoniyim* (Heb.) (vol. 2; Tel-Aviv: Hotsa'at Me'orat, 1937) 2.1:182–83; Solomon Zeitlin and Sidney Tedesche, *The Second Book of Maccabees* (New York: Harper, 1954) 112–13; Jonathan A. Goldstein, *2 Maccabees*, AB 41A (Garden City, N.J.: Doubleday/Anchor, 1984) 186. With regard to the problems involved in these verses in general, see Goldstein, 184–86.

We have not found any attempt in rabbinic literature to demonstrate that Solomon's dedication of the Temple was an eight-day celebration, nor have we found any comparisons of the lengths of the dedications (חנוכות) in general.[40] However, another interesting association between Hanukkah and Solomon is found in *Berešit Rabbah*:[41]

> א״ר לוי ... ואותן שבעת ימים [= של חנוכת שלמה] היו ישראל אוכלין ושותין ושמחים ומדליקים נרות (!).
>
> R.Levi said . . . and during those seven days [of the dedication of Solomon] the Israelites ate and drank and were joyous and *kindled lights* (!).

In summary, Scholium O and Scholium P are unclear, fragmented and corrupt. In spite of this, they appear to be preserving an ancient *midrash*, also preserved in 2 Maccabees, which essentially compares the Hasmonean dedication to the dedications of the Tabernacle and the Temple. The tradition in Scholium O, which appears to find support for the eight days of the Hasmonean dedication in an eight-day dedication by Solomon, is closer to the tradition in 2 Maccabees than is Scholium P, which contrasts the seven days of Solomon and the eight days of the Hasmonean dedication. Scholium O is thus closer to an even earlier tradition known to Jason of Cyrene, the author of the earlier, more extensive work on which 2 Maccabees was based. This tradition has no explicit parallel version in the rabbinic literature, yet one trace of it nevertheless remained in *Berešit Rabbah*.

THE IRON SPITS

According to Scholium P (lines 43–49), the Hasmoneans erected a new candelabrum in the Temple by improvising one out of seven iron spits.[42] This activity lasted eight days, and consequently Hanukkah is celebrated for eight days. The episode of the spits appears to be missing from Scholium O (however, see below). The episode of the spits is mentioned in a *baraita* in the Babylonian Talmud:[43]

40 *Pesikta Rabbati* 2 (ed. Friedmann, 7a) lists "seven dedications." But the dedication of Solomon is not listed there at all, nor are the eight days of the Hasmonean Hanukkah or any other Hanukkah mentioned in that context.

41 *Berešit Rabbah* 35:3 (ed. Theodor-Albeck, 332).

42 With regard to the commonly accepted explanation as to the nature of these spits, as well as his own ideas on the subject, see Daniel Sperber, "The Spits of the Maccabees: What Were They?" (Heb.), *Sinai* 53 (1963) 280–82.

43 *B.Roš Haš.* 24a; *b.Abod. Zar.* 43a; *b.Menaḥ.* 28b. Cf. *Pesikta Rabbati* 2 (ed. Friedmann, 5a).

כדתניא, לא יעשה אדם בית תבנית היכל, אכסדרה תבנית אולם... מנורה כנגד מנורה. אבל עושה של חמשה ושל ששה ושל שמונה [קנים] ושל שבעה לא יעשה אפי׳ של שאר מיני מתכות [לפי שכיוצא בהן כשירה לפנים (רש״י)]. רבי יוסי בר יהודה אומר אף של עץ לא יעשה כדרך שעשו מלכי בית חשמונאי. אמרו לו משם ראיה, שפודין של ברזל היו וחיפום בבעץ. העשירו עשאום של כסף, חזרו העשירו עשאום של זהב.

As it has been taught: A man may not make a house in the form of the Temple, or a porch in the form of the Temple court, . . . or a candelabrum after the design of its candelabrum. He may, however, make one with five or six or eight [branches], but with seven he may not make it, even though it be of other metals [since a candelabrum of other metal besides gold would have been permissible in the Temple – Rashi]. R. Jose b. Judah says: Also of wood he may not make it, because thus did the Hasmoneans make it. [The Rabbis] said to him: Is any proof to be deduced from that? The spits were of iron and they overlaid them with tin. When they grew rich, they made them of silver. When they grew richer still, they made them of gold.

The *baraita* does not contain the complete version of the event ("Because in the days of Greece the Hasmoneans entered . . .") but only makes an allusion to it. On the other hand, the continuation "When they grew rich they made them of silver . . ." is not mentioned in the Scholium. The passage in the Scholium does not appear to be based on the tradition in the *baraita*, but quite the opposite: the *tanna'im* engaging in the dispute in the *baraita* are referring to an ancient tradition which reported the story in its entirety, a story similar to that which appears in the Scholium.[44] The wording in Scholium P, "and they joined [וחברום] them with tin" is probably a graphic corruption of the original word (overlaid, וחיפום) found in parallel versions. The sentence, "and they were

44 However the *midrash* in *Pesikta Rabbati* 2: "And why do we kindle lights on Hanukkah . . . entered the Temple and found therein eight iron spits" is suspected of being a later version, which may already be based on the language in the Babylonian Talmud. The expression "and found therein" may have been taken from the incident of the cruse of oil which they found in the Temple; it does not fit in with the event under discussion. (According to the Scholium, the spits were brought into the Temple from outside.) The wording "eight spits" does not make sense and is undoubtedly a corruption by printers. This is borne out by the *baraita* presented above, which proves that a candelabrum with eight branches may not be used in the Temple. Cf. Friedmann, *Pesikta Rabbati*, 5a n.5. His hypothesis is verified by the manuscripts of *Pesikta Rabbati*. These facts were brought to my attention by Dr. Benjamin Elizur (and not as according to Alon, "Did the Jewish People," 14).

occupied with it all eight [days]," which concludes the episode in Scholium P, is rather surprising. It should not take eight days to make branches for a candelabrum out of iron spits for kindling the lights! In fact, this sentence does not appear in the parallel versions (neither in *Pesiqta Rabbati*,[45] nor in the reconstructed parallel version of Scholium O, see below). An examination of the introductory sentence to this section in Scholium P, which repeats the historical context of the story from its very beginning ("Because in the days of Greece the Hasmoneans entered the Temple Mount . . ."), indicates that this passage was originally a separate unit, unrelated to what preceded it in the Scholium, and was not originally intended to explain why Hanukkah is celebrated specifically for eight days. The redactor of Scholium P apparently incorporated a short, ancient passage regarding the iron spits into his work as an answer to the question appearing at the end of his preceding unit: "Why did they determine to celebrate this one for eight [days]?" and therefore appended to the end of the story of the spits that the Hasmoneans were "occupied" with it for eight days.

BUILDING THE ALTAR

ומצאו מזבח סתור ותקנוהו	And they found a demolished altar and they repaired it
כל שמנה וכלי שרת	All eight [days] and the service vessels
ולכך נוהגת שמונה	And it is therefore celebrated for eight [days]
והיתה חנכת המזבח	And there was the dedication [חנכת] of the altar.

This tradition is found only in Scholium O (lines 50–54), and it has no parallel version, either in Scholium P or anywhere else throughout rabbinic literature! It should be emphasized that in the few places where we did find explicit reference by the Sages to the reason for establishing the festival of Hanukkah[46] there is no mention of the dedication of the altar as an explanation for Hanuk-

45 See the two preceding notes.

46 Such as the episode of the iron spits in *Pesikta Rabbati* (above, n. 44), the miracle of the cruse of oil in *b.Šabb.* 21b, the victory and the purifying of the Temple in the later version of the prayer, "We thank Thee for the miracles" (*Al Hanissim*), and the "miracles" and "salvations" mentioned in general in the prayer, "We kindle these lights" (*Hanerot Halalu*). Cf. also the version appearing in *Masekhet Soferim* 20:4, ed. Michael Higger (New York: Debe Rabanan, 1937) 343–44: *Hanerot ha'elu* and in the ancient Erez Israel version of *Al Hanisim* (which begins *ukenisei pela'ot*; *Masekhet Soferim* 20:6, 346).

kah. This tradition is closer to that of 1 Maccabees (4:42–59) which specifically regards the dedication of the altar and not the kindling of the candelabrum as the reason for Hanukkah.[47] Apparently, the dedication of the altar was the focal point of the dedication of the Temple, and therefore in 1 Maccabees[48] the festival is called "the dedication of the altar [חנוכת המזבח]," and for all generations – "Hanukkah." The altar was also a focal point in the dedication of the Tabernacle, in the dedication by Solomon, and in the dedication of the Second Temple.[49] The extant Scholium O is unclear and corrupt ("And they found a demolished altar and they repaired it all eight [days] and the service vessels"!), but an important medieval work which cites Scholium O may help reconstruct it. R. Isaac b. Moses of Vienna, the author of *Or Zaruʿa*,[50] in regard to the laws of Hanukkah, offers an explanation for the eight-day miracle of the cruse of oil in the name of his rabbi, R. Judah b. Isaac, better known as R. Judah Sir Leon.[51] His explanation is based on *Megillat Taʿanit*:

> „מאי חנוכה דתניא בעשרים וחמשה בכסלו [...] ונעשה בו נס והדליקו ממנו שמונה ימים לשנה אחרת קבעום ימים טובים בהלל ובהודאה" [...]והא דנעשה נס שהיה דולק שמונ׳ ימים פי׳ מורי רבי יהודה בר׳ יצחק משום שהיו טרודים כל ז׳ ימים בבנין המזבח ובכלי שרת, דאמרי במגילת תענית: ,ולדורות חנוכ׳ בית חשמונאי ולמה היא נוהגת לדורות, אלא שעשאוהו בצער ואמרו בו הלל והודאה, והדליקו בו נרות בטהרה. לפי שנכנסו יונים בהיכל וטמאו כל הכלים, ולא היה להם במה להדליק שמן, וכשגבר׳ יד בית חשמונאי הביאו שבעה שיפודי ברזל וחיפום בבעץ והתחילו להדליק. ולמה היא נוהגת להדליק שמונה, אלא שסתרו המזבח ובנאוהו, וכל שבעת הימים היו מתקנים בכלי שרת.׳ ופי׳, דמיד היו מתקנין שמן אחר, אלא שהיו טרודין להכין ולטהר כלי שרת ולעשות המזבח, ולא יכלו ליקח שמן אחר. ולכך נעשה נס בפך שמן ונתקיים שמונה ימים, ולפיכך נקרא חנוכה על שם חנוכת המזבח שנסתר ובנאוהו.

47 It also mentions the candelabrum, the altar of incense and the table. However, the main emphasis is on the building and dedication of the altar. The contradiction between the two traditions about the candelabrum and the altar has already been considered by R. Judah Sir Leon; see below.

48 1 Macc 4:56, 58.

49 See Lev 9:24; Num 7:10 ff., 84 ff.; 1 Kgs 8:22, 62–64, 2 Chr 7:1–5; Ezra 3:2.

50 R. Isaac lived in Germany and France during the second half of the thirteenth century. See Ephraim E. Urbach, *The Tosafists: Their History, Works, Methods* (Heb.) (2 vols.; Jerusalem: Magnes Press of the Hebrew Univ., 1980) 1:436–47; *Or Zaruʿa* (2 vols.; Zhitomir: Shapira, 1862) 2:321.

51 R. Judah lived in Paris during the beginning of the thirteenth century. For more about him, see Urbach, *Tosafists*, 320–35, and more recently Israel M. Ta-Shma, *Exegetical Literature on the Talmud in Europe and North Africa* (Heb.) (Jerusalem: Magnes Press of the Hebrew Univ., 2000) part 2, 107–8.

> "What is the reason for Hanukkah? For our Rabbis taught: On the twenty-fifth of Kislev [...] and a miracle was wrought therewith and they kindled [the candelabrum] from it for eight days. The following year they appointed them [the days] an eight-day festival with [the recital of] Hallel and thanksgiving." My teacher, R. Yehudah ben R. Yitzhak, explained that the miracle of the oil remaining kindled for eight days was because they were occupied all seven days with the building of the altar and with the service vessels, as is stated in *Megillat Ta^canit*: "The dedication of the Hasmoneans [is to be celebrated] for [all] generations. And why is it celebrated for all generations? Because they performed it in sorrow and recited on it the Hallel and thanksgiving, and they kindled the lights on it in purity. Because the Greeks entered the Temple and defiled all the vessels, and they had nothing with which to kindle the oil. And when the Hasmonean dynasty had the upper hand, they brought seven iron spits and covered them with tin and began to kindle. And why are the lights kindled for eight [days]? Because they demolished the altar and rebuilt it, and all seven days they were repairing the service vessels." That means, they could immediately have prepared other oil, but they were occupied preparing and purifying the service vessels and building the altar, and they could not buy other oil. And thus a miracle occurred with the cruse of oil and it lasted for eight days. Therefore, it is called Hanukkah [dedication], because of the dedication of the altar that was demolished and which they rebuilt.

R. Judah Sir Leon is trying to harmonize the reason given in the Talmud for the eight days – the miracle of the cruse of oil – with the reason given in *Megillat Taᶜanit* (both the Megillah and the Scholium are referred to as *Megillat Taᶜanit* in medieval citations) – "And why are the lights kindled for eight [days]? Because they demolished the altar and rebuilt it, and all seven (!) days they were repairing the service vessels." He suggests viewing the miracle of the cruse of oil as the direct reason for the eight days of Hanukkah, and the time it took to rebuild the altar as the indirect reason: the length of the miracle of the cruse of oil was the outcome of being occupied with repairing the altar. R. Judah's effort at harmonization indicates that he was well aware of the contradictions involved in the different Hanukkah traditions, and even of those involved in the very name of the festival – *Hanukkah* ("Therefore, it is called Hanukkah, because of the dedication of the altar"), as opposed to the explanations involving the kindling of the candelabrum. The citation quoted by R. Judah Sir Leon may be able to correct several of the corruptions appearing in the Oxford manuscript with regard to the repairing of the altar:

Scholium O – MS Oxford	*Scholium O – Or Zaruʿa*
ומצאו מזבח סתור ותקנוהו	אלא שסתרו המזבח ובנאוהו
כל שמנה וכלי שרת	וכל שבעת הימים היו מתקנים בכלי שרת
And they found a demolished altar and they repaired it	Because they demolished the altar and rebuilt it,
all eight [days] and the service vessels.	and all seven days they were repairing the service vessels.

From the wording of Sir Leon's reason, "because they were occupied all seven days," as well as from the citation, it appears that the Scholium that he was quoting read "seven days" and not "eight."[52] Perhaps what the Scholium was saying was that the altar was demolished and rebuilt in one day, but it took seven days to purify all of the service vessels, as they had been defiled and, according to halakhic requirements, had to be sprinkled with sin-offering water on the third and seventh days. The version appearing in the Oxford manuscript was apparently corrected at a later date from "seven" to "eight," and the copyist transferred the purification activities from the "service vessels" to the "altar." As to Sir Leon's version: "they demolished the altar and rebuilt it," instead of "and they found a demolished altar and they repaired it," this is an original version, which is verified by 1 Maccabees and rabbinic literature:

> And they took counsel concerning the altar of burnt offerings, which had been profaned . . . so they pulled down the altar . . . and built a new altar after the fashion of the former [one]. (1 Macc 4:44–47)[53]

> ... גנזו בני חשמוניי את אבני המזבח ששיקצום מלכי ייון (מידות א ו).

> . . . wherein the Hasmoneans had hidden away the stones of the altar which the kings of Greece had defiled. (*m.Mid* 1.6)[54]

52 For this suggestion I am indebted to Professor Menachem Kister.

53 See also *Ant.* 12:318.

54 Cf. *b.Yoma* 16a; *b.Abod. Zar.* 52b; *Midrash Hagadol Exodus* 20.21 (ed. M. Margaliot [Jerusalem: Mossad HaRav Kook, 1956] 443); David Hoffmann, *Mekhilta de-Rabbi Shimon bar Yohai on Exodus* (Frankfurt: J. Kauffmann, 1905) 115, identified the passage in *Midrash Hagadol* as a citation/remnant of the *Mekhilta de-Rabbi Shimon bar Yoḥai* and included it in his edition, but the passage does not appear in the J. N. Epstein - E. Z. Melamed edition (Jerusalem: Mekize Nirdamim, 1955).

Apparently, the description of the demolishing of the altar by the Hasmoneans was not understood by one of the copyists after Sir Leon's day, and the language was intentionally "corrected" from "they demolished the altar" to "and they found a demolished altar."

As to the "service vessels," Josephus uses the identical expression in *Jewish War* (1:39) and in exactly the same context. He relates that Judah Maccabee "made *new service vessels* (λειτουργίας σκεύη), and brought them into the Temple, because the former vessels had been profaned. *He built another altar*..."

HALLEL

The reciting of Hallel is mentioned briefly in the second unit of Scholium O: "and they recited on it the Hallel, and they kindled the lights on it in purity" (lines 40–41). Scholium P devotes an entire unit to Hallel (lines 50–70) which incorporates verses from the Bible and begins with the formal introduction: "And why did they determine to recite on them the Hallel?" It quotes a fairly close approximation of Ezra 3:11, "And they sang one to another in praising and giving thanks unto the Lord: 'for He is good....'" This allusion to the time of Ezra was apparently to find a basis for reciting Hallel during the Hasmonean dedication of the Temple based on the Hallel recited at the laying of the foundation of the Second Temple.[55] The quote is followed by a homiletical interpretation of the verse "Salvation belongeth unto the Lord... [לה' הישועה]" (Psalms 3:9), which suggests that Hallel is recited on any occasion of salvation. There is no known parallel version to this rather nice interpretation, and Graetz[56] surmises that it is based on a "lost *baraita*."

The actual obligation of reciting Hallel on Hanukkah is found in the Tosefta[57] and is discussed in the Talmud.[58] This practice appears to have ancient roots, which go back to the time of the events themselves. The reciting of Hallel is alluded to already in 1 Maccabees: "On that day was it dedicated afresh, *with songs* and harps and lutes and with cymbals..." (1 Macc 4:54). 2 Maccabees, which notes that Hanukkah was a substitute for Sukkot, describes the *thanksgiving* (הודיה) with "wands wreathed with leaves and branches bearing ripe fruit and palm fronds" (2 Macc 10:7), no doubt referring to the shaking of the *lulav* while saying "O give thanks unto the Lord, for He is good" as is practiced on Sukkot. According to the halakhic ruling of the Tosefta,[59] Hallel is recited

55 An analogy between these events is already alluded to in 2 Maccabees 1–2. Cf. a similar reason for reciting the Hallel cited by Tabory (*Jewish Festivals*, 387 and n. 66, in the name of *Shibbolei Haleqet*, and additional reasons for reciting Hallel on Hanukkah collected by him.

56 Heinrich Graetz, "Die Halleluja und Hallel Psalmen," *MGWJ* 28 (1879) 203, n. 1.

57 *T. Sukkah* 3.2 (ed. Saul Lieberman, *Tosefta Mo'ed* [New York: Jewish Theological Seminary of America, 1962] 266) and it appears in the Talmud; cf. the parallel passages listed by Lieberman.

58 *B. ʿArak.* 10a.

59 See n. 57 above.

only on the first night and day of Passover, whereas it is recited on all eight days of Sukkot. In the Land of Israel, the half Hallel was never recited, nor was it customary to recite Hallel on the intermediate days of the festivals (*Ḥol hamoᶜed*) or on the New Moon (*Rosh Ḥodesh*).[60] Hence, Sukkot was the festival of Hallel par excellence,[61] and it is therefore not surprising that the practice of reciting Hallel was copied to Hanukkah. The verse "O give thanks unto the Lord" is the very same verse that was recited at the dedication of the Second Temple (Ezra 3:11): "And they sang one to another in praising and giving thanks unto the Lord: 'for He is good . . .' [ויענו בהלל ובהודות לה׳ כי טוב]," and the author of 2 Maccabees was aware of this similarity. He mentions the reciting of Hallel at the start of the laying of the foundation of the Second Temple: "Then the priests sang the hymns" (2 Macc 1:30). Josephus as well points out that Judah Maccabee sang many "hymns and psalms" (*Ant.* 12:324). And indeed, the words "hymns" (הלל) and "thanksgiving" (הודיה) are deliberately incorporated into all of the versions of the "We thank thee for the miracles" (*Al Hanisim*) prayer and "We kindle these lights" (*Hanerot Halalu*) prayer. As a result, Graetz[62] surmised that the law regarding the reciting of Hallel was conceived originally by the Hasmoneans on Hanukkah. The repeated mention in both Scholia of the reciting of Hallel during Hanukkah is, in my opinion, further evidence of the ancient nature of their traditions. It is an echo of a time when Hallel was not recited often, a vestige of the ancient Hasmonean Hanukkah with its spontaneous outpouring of Hallel, thus creating the unique connection between Hallel and Hanukkah.[63] Apparently, the uniqueness of this association became obscured when Hallel began to be generally recited on the New Moon and on the intermediate days of Passover, and once the memory of the historical events began to fade.

THE METHOD OF KINDLING THE LIGHTS

Scholium P presents a parallel version of the famous *baraita* regarding the dispute between the House of Shammai and the House of Hillel over the kindling of the Hanukkah lights. Scholium P presents the beginning of this *baraita* with somewhat different wording. It is difficult to determine whether the differences are the result of different traditions or are a loose paraphrasing of

60 See *t.Pesaḥ.* 10:8 (ed. Lieberman, 197); *b.Taᶜan.* 28b; cf. Lieberman's discussion, *Tosefta Ki-Fshuṭah, Mo'ed* (3 vols.; New York: Jewish Theological Seminary of America, 1962) 1:872.

61 With regard to the unique connection between Sukkot and the reciting of Hallel, see S. Stein, "The Liturgy of Hanukkah and the First Two Books of Maccabees," *JJS* 5 (1954) 100–6.

62 Graetz, "Hallel Psalmen," 207–8.

63 Accordingly, there is no reason to question the non-recital of Hallel on Purim (see *b.Meg.* 14a). It is the reciting of Hallel throughout the eight days of Hanukkah that constitutes a departure from the norm!

the same tannaitic law. The *baraita* appearing in the Scholium was cut short in the extant manuscript or in one of its precursors by a copyist who simply refers the reader to the Talmud: "... etc. As is cited in [*b.Šabbat*] '*Bameh Madlikin*' (With what may we kindle [the Sabbath lights?])." Therefore, it is impossible to know whether Scholium P contained additional units and how much of the *baraita* itself was actually quoted.

The Cruse of Oil in the Scholia Traditions

Scholium P begins its explanation about Hanukkah with the story of the cruse of oil. This is also the explanation given in the Talmud, in the discussion, "What is the reason for Hanukkah?" (מאי חנוכה) quoted in the introduction to this article. However, there are distinct differences between the version appearing in Scholium P and the version appearing in the Talmud:

b.Šabbat 21b[64]	*Scholium P*
שכשנכנסו יוונים להיכל טמאו	מפני שטמאו גוים
כל השמנים שבהיכל	את בית המקדש
וכשגברה	וכשתקפה
מלכות בית חשמונאי	מלכות בית חשמונאי
ונצחום	
בדקו ולא מצאו אלא	בדקוהו ומצאו בו
פך אחד של שמן	שמן טהור
שהיה מונח בחותמו של כ״ג	
ולא היה בו אלא להדליק יום אחד	
נעשה בו נס	
והדליקו ממנו ח׳ ימים	והדליקו בו את הנרות
	כל אותן ימים
	שהדליקו בהם את הנרות
לשנה אחרת קבעום ועשאום	עשאום
ימים טובים	יום טוב
בהלל והודאה	
For when the Greeks entered the Temple, they defiled	Because the heathens defiled
all the oils in the Temple,	the Temple.
and when the Hasmonean dynasty	And when the Hasmonean dynasty
prevailed against and defeated them,	prevailed,

64 The text is based on the Venice edition (1520).

b.Šabbat 21b	*Scholium P*
they made search and found only one cruse of oil	they searched it and found in it pure oil
which lay with the seal of the High Priest, but which contained sufficient quantity for only one day's kindling. Yet a miracle was wrought therewith	
and they kindled [the candelabrum] from it for eight days.	And they kindled the lights therewith. All of those days on which they
The following year they designated	kindled the lights
and appointed them [the days]	they appointed
a festival	a festival.
with [the recital of] Hallel and thanksgiving.	

Scholium P does not refer explicitly to defiled oil, nor specifically to the finding of a sealed cruse of oil, but refers simply to "pure oil." Furthermore, the main thrust of the Babylonian version of the episode – the miracle of the small quantity of oil that "contained sufficient quantity for only one day's kindling, yet a miracle was wrought therewith and they kindled [the candelabrum] from it for eight days" is omitted from the episode appearing in Scholium P. Instead, there is a rather vague reason for the eight days of the festival: "All of those days on which they kindled the lights they appointed a festival." The unconvincing nature of this seemingly appended explanation for the eight-day period is further evidenced by Scholium P's need for an alternative explanation, according to which, "they were occupied with" erecting a candelabrum from "iron spits" (above) also "all eight [days]." By contrast, Scholium O ascribes an eight-day period of activity specifically to the rebuilding of the altar (see above). In the other units of Scholia O and P, the number eight appears to be an artificial addition that was offhandedly appended to the various purification activities in the Temple. The same seems to be true regarding the cruse of oil. The eight days of kindling described in Scholium P are clearly not an integral part of the story of the kindling of the candelabrum. The version of the episode without the explanation of the eight days, as it appears in Scholium P, is an original version whose subject is the renewal of the Temple service, including the kindling of the candelabrum by the Hasmoneans, *with no mention of a miracle or an eight-day motif.* A parallel event involving a "finding" that facilitated the renewal of the Temple service during "the days of the Greek kingdom" is found in the Jerusalem Talmud:

בימי מלכות יוון היו משלשלין להם שתי קופות של זהב והיו מעלין שני כבשים פעם אחת שילשלו להם שתי קופות של זהב והעלו להן שני גדיים באותה השעה האיר הקב"ה את עיניהם ומצאו שני טלאים בלישכת הטלאים. (ירושלמי תענית ד ו, דף סח עמוד ג)

> During the days of the Greek kingdom, they would send down to them two cages with gold and they would send up two sheep. Once they sent down two cages with gold and they sent up to them two kids. *At that moment the Almighty enlightened them and they found two lambs in the chamber of lambs.* (*y.Ta*ʿ*an.* 4:6, 68c)

Just as in the above example they "found . . . lambs" and presented the daily offering in spite of scheming by the Greeks, here too they "found in it pure oil" with which to kindle the candelabrum. In Scholium P however, the author "appends" the eight-day motif to the end of the story: "They searched it and found in it pure oil" (and note: it does not mention that "it contained sufficient quantity for only one day's kindling"!); "All of those days on which they kindled the lights they appointed a festival." This superficial explanation for the eight days is similar to the other explanations appearing in O and P: "And they were occupied with it [the spits] all eight [days]"; "And they found a demolished altar and they repaired it all eight [days]." The author found it necessary to resort to farfetched explanations of the eight days. Apparently he was unaware of the elegant explanation of a bit of oil that miraculously lasted for eight days in the parallel passage in the Babylonian Talmud. This would indicate that the version of the episode appearing in the Scholium predates the Babylonian version. Apparently, the redactor was as yet unfamiliar with the more advanced and developed Babylonian version. It was the Babylonian Talmud that transformed the superficial connection between the kindling and the eight days into the story of a "cruse of oil . . . a miracle was wrought therewith."[65] This adaptation of the episode was apparently intended to replace the original flimsy explanation for the eight days with a new explanation that would be both satisfactory and appealing. The possible background of the story may be identified in the biblical miracle of the bit of oil that miraculously turned plentiful (2 Kings 4:1–7). The motif of a miraculous reaction from Heaven to a human activity at the beginning of the Tabernacle/Temple service is also an ancient

65 There are those who also place the episode of the cruse of oil in its more developed form at a later date, but for different reasons, involving the development of *halakhah*; see Lichtenstein, "Die Fastenrolle," 275–76.

66 See Lev 9:24; 1 Kgs 8:10–11; 2 Chr 7:1; 2 Macc 1:22.

motif.[66] From a comparison of the versions of the Scholium and the Babylonian text, it would appear that the anonymous editor was blessed with a literary bent of mind, unencumbered by any political agenda.

This state of affairs demands a renewed inspection of the well-known talmudic tale of the cruse of oil. Essentially, the episode is *not a story of a miracle* but rather the story of the *renewal of the Temple service*. The motif of eight days was a later addition to the story, just as it was a later addition to the other activities involved in the renewal of the Temple service – the erecting of the candelabrum and the rebuilding of the altar. In Scholium P this connection is still hesitant and flimsy, while the explanation presented in the Talmud is already well developed and polished, inventing a new motif of a bit of oil that miraculously lasted for eight days.

Thus far we have been dealing with Scholium P. Scholium O, however, does appear to recount the story of the miracle:

> שכשנכנסו יונים להיכל, טמאו כל הכלים ולא היה שמן במה להדליק וכשגברו מלכות בית חשמונאי מצאו פך אחד בחותמו של כהן גדול ונעשה נס והדליקו ממנה עד שמונה ימים.
>
> For when the Greeks entered the Temple, they defiled all the vessels, and there was no oil in what to kindle, and when the Hasmonean dynasty prevailed, they found one cruse with the seal of the High Priest, and a miracle was wrought and they kindled [the lights] from it up to eight days.

This is the complete account of the "miracle of the cruse of oil." The wording of the incident, however, was corrupted: It is not "oils" (שמנים) that were defiled, as in the talmudic story of the cruse of oil, but instead, "all the vessels." Generally, the meaning of the word "vessels" (כלים) in the context of the Temple service refers to the Temple service vessels and not containers for storage of oil. The next sentence is syntactically incorrect. It states, "There was no oil in what to kindle" (לא היה שמן במה להדליק) instead of "There was no oil with which to kindle" (לא היה שמן להדליק בו). The citation about Hanukkah taken from Scholium O[67] by the author of *Or Zaruʿa* in the name of his rabbi, which was referred to earlier, differs from the extant Scholium O (below), particularly with regard to those sentences which appear to relate to the miracle of the cruse of oil:

67 The quoted text that appears before and after the unit under discussion clearly indicates that the citation is from Scholium O. Compare the complete passage in *Or Zaruʿa*, as presented above, with the version appearing in Scholium O in the chart at the beginning of this article.

Scholium O – MS Oxford	*Scholium O – Or Zaruʿa*
שכשנכנסו יונים להיכל טמאו כל הכלים	לפי שנכנסו יונים בהיכל וטמאו כל הכלים
ולא היה שמן במה להדליק	ולא היה להם במה להדליק שמן
וכשגברו מלכות בית חשמונאי	וכשגברה יד בית חשמונאי
מצאו פך אחד בחותמו של כהן גדול	הביאו שבעה שפודי ברזל וחפום בבעץ
ונעשה נס והדליקו ממנה עד שמונה ימים.	והתחילו להדליק.
For when the Greeks entered the Temple, they defiled all the vessels	Because the Greeks entered the Temple and defiled all the vessels
and there was no *oil in what to kindle*	and they had nothing *in which to kindle the oil.*
And when the Hasmonean dynasty prevailed,	And when the Hasmonean dynasty gained the upper hand
they found one cruse with the seal of the High Priest	*they brought seven iron spits and covered them with tin*
And a miracle was wrought and they kindled [the lights] from it for up to eight days	*and began to kindle.*

The version of *Megillat Taʿanit* (i.e., Scholium O of *Megillat Taʿanit*) that was quoted by R. Isaac of Vienna in *Or Zaruʿa* and his rabbi, R. Judah Sir Leon, contained the incident of the iron spits, and *not the story of the cruse of oil*! *Or Zaruʿa* cites the miracle of the cruse of oil *from the Talmud*. R. Judah Sir Leon's previously-mentioned attempt to reconcile the contradicting traditions of the dedication of the altar in *Megillat Taʿanit* and the miracle of the cruse of oil in the Talmud, indicates that the story of the cruse of oil did not appear at all in his *Megillah*, but only in the Talmud. His Scholium O contained only the incident of the spits. Today's extant Oxford manuscript is clearly not an original version. It does not refer to "oils" (שמנים) that were defiled, as in the story of the miracle of the cruse of oil, but "all the vessels" (כל הכלים), including the candelabrum. The syntactically incorrect sentence "there was no oil in what to kindle" (לא היה שמן במה להדליק) is an intentional distortion of the original sentence: "and they had nothing in which to kindle the oil" (לא היה להם במה להדליק שמן). It was not *oil* that was missing, but rather a *candelabrum*. The

event that fits in here is the story of the *spits* and not the story of the *oil*. It would appear that the story of the spits in Scholium O was intentionally and clumsily replaced by the story of the cruse of oil taken from the Babylonian Talmud, and this occurred only after the time of R. Isaac of Vienna, the author of *Or Zaruʿa*.

The hybrid version of the Scholium closely follows the structure of Scholium P with regard to Hanukkah. Incorporated in between the units of Scholium P is an episode from Scholium O (the repairing of the altar). This, typically, is one of the methods used by the redactor for combining the two versions.[68] In the case of the miracle of the cruse of oil, the hybrid version replaces the version found in Scholium P with the Babylonian version. This too does not in any way constitute a departure from normal practice. The redactor of this compilation repeatedly incorporated units from the Babylonian Talmud and even replaced original passages of the Scholium with parallel passages from the Talmud.[69] The end of the Scholium also contains several units which were taken from the Babylonian Talmud.[70] However, in the case of the cruse of oil, the dependence of the author of the hybrid version on the Babylonian Talmud led to an erroneous belief that was widely held and firmly entrenched among scholars, i.e., that the miracle of the cruse of oil is presented in both the Babylonian Talmud and *Megillat Taʿanit*. In fact, it appears only in the Talmud, from which it was later copied into the hybrid version of the Scholium.

An indirect outcome of comparing the traditions regarding Hanukkah in the Babylonian Talmud and in the Scholia is that we obtain an indication of the value and origins of Scholium O and Scholium P. These two extant scholia, although fragmented and corrupt, preserve authentic and important traditions. The tradition in Scholium O involving the building of the altar and the

68 See Noam, "Scholion," 74–84.

69 See Noam, "Scholion," 84 and n.115.

70 "The precept of Hanukkah demands one light for a man and his household"; "There were two old men in Sidon"; "Its observance is from sunset." In the last unit, the redactor apparently decided to incorporate his own *halakhah*. Before presenting the passage from the Babylonian Talmud, "But in times of danger it is sufficient to place it on the table," he adds: "But if one is afraid of Gentiles, one places it at the door of one's house on the inside." This type of law appears in the medieval halakhic responsa of Germany. The author of the *Haggahot Maimuniyyot* on Maimonides' laws of Hanukkah in the *Mishneh Torah* 4:9 states in the name of Rabbenu Simḥah: "That we who kindle inside . . . all of the laws regarding where to kindle apply as for outdoors . . ."; and compare to the words of Maimonides himself, *Hilkhot Hanukkah*, 4:8: "In times of danger a person may place the Hanukkah light *inside his house from within and it is even* (!) sufficient to place it on the table." And in *Shibbolei Haleqet 185*, the laws of Hanukkah 72a: "R. Ephraim of blessed memory used to say, Now in these times when we do not kindle outdoors, it is best to place it on the right side from within, and there are those who dispute this. . . ."

repairing of the service vessels does not appear at all in the Babylonian Talmud, nor does the comparison with the dedications of Moses and Solomon. The incident of the iron spits, which was part of the original Scholium O, is in fact alluded to in the *baraita* cited in the Babylonian Talmud, but the version in the Scholium appears to be an earlier version than that of the *baraita*, and it is also not familiar with many of the details mentioned in the *baraita*. As to Scholium P, its presentation of the homiletical interpretation regarding Hallel, and the comparisons it makes with the dedications of Moses and Solomon have no parallel version whatsoever, either in the Talmud or in rabbinic literature in general. The *baraita*, "The precept of Hanukkah [demands] one light" is the only unit that might have been the same as, or similar to, what appears in the Babylonian Talmud, but it was cut short by copyists. The original Scholium O made no mention whatsoever of the story of the cruse of oil; Scholium P presents it in an earlier, more primitive version. These substantial differences in content clearly indicate that there is no genetic connection between the explanation in the Talmud and the scholia in their extant form. Even though Scholia O and P are considerably inferior to the Talmud in syntax and style, they incorporate unique ancient sources, not a trace of which are to be found either in the Talmud itself or in the rabbinic literature in general, but which are verified by such external sources as Maccabees and Josephus. Furthermore, we happened upon one tradition – the miracle of the cruse of oil – which appears in Scholium P in an early variant, while the very same tradition appears in the Babylonian Talmud in a later, reworked version, indicating that Scholia O and P were written and redacted in an atmosphere as yet unencumbered by the influence of the Babylonian Talmud. Interestingly, the miracle of the cruse of oil is conspicuously absent in the ancient Erez Israel *piyyutim*. Mention should be made here of the words of Shulamit Elizur:[71]

> As with all of the early Erez Israel *paytanim*, the famous miracle of the cruse of oil is not alluded to here [the *piyyut* "*Eid nakhon lesal'i*" by Kallir]. This story, which originated in the Babylonian Talmud, does not appear in any Erez Israel source. The silence of both the midrashic as well as the paytanic sources in this regard indicates that in Erez Israel at that time this story was as yet unknown.

It would appear that we may also deduce from this something about the antiquity and Erez Israelian provenance of the original traditions of the Scholia.

71 Shulamit Elizur, "The Hanukkah Piyyutim: Symbol vs. Reality," in *The Hasmonean Era* (Heb.), 303–10. I wish to thank Prof. Elizur for her generous help with regard to the *piyyut*.

Conclusion

The story of the miracle of the cruse of oil illustrates several of the impediments that rabbinic literature places in the way of the attempt to reveal the "attitude of the Sages" to a particular subject: the multitude of variations appearing in this literature; the dynamic and fluid way in which it is transmitted; the domineering influence of the Babylonian Talmud over parallel or earlier traditions – all of which may contribute to the creation of a distorted picture.

The extant versions of the Scholia offer three different traditions that explain why we celebrate Hanukkah:

1. Finding pure oil and kindling the candelabrum
2. Erecting the candelabrum from iron spits
3. Building the altar

Of the three explanations, the tradition of the iron spits is the only one that is common to both Scholium O and Scholium P. Both scholia also make a comparison between the Hasmonean dedication (Hanukkah) and the dedications of Moses and Solomon. The wording of the units, particularly the introductory and concluding sentences, indicates that each unit was originally written separately, and the intermediate wording that joins the units in each of the versions, is unconvincing and forced. It can be assumed that several different folk traditions regarding Hanukkah were circulating among the populace during Second Temple times. There were traditions connecting the date of Hanukkah to the renewal of the sacrificial service on the altar. Others tied it to the kindling of the lights in the candelabrum, whether by finding pure oil or by improvising a new candelabrum. Both explanations follow from the two names of the festival, which were known already in Second Temple times – *Hanukkah* and *Orot*, "Lights." Both incidents are mentioned among the purification efforts of the Hasmoneans in the books of Maccabees and in the testimony of Josephus.[72] The reason behind the eight-day celebration of the festival was apparently vague from early on. As a result, artificial "pretexts" for the number eight were appended to each of the traditions, in the Scholium as well as in other

72 Even though they also emphasize the showbread and the incense, the festival is connected specifically to the dedication of the altar. It should also be noted that all of the activities involved in the purification of the Temple, as recounted in 1 and 2 Maccabees, were not known to the authors of the two Scholia. Even though 2 Maccabees alludes to the dedications of Moses and Solomon as the reason for the eight days of Hanukkah, Scholium O is not familiar with the explanation given in 2 Maccabees that the eight days are a substitute for Sukkot. This is further evidence for the impression I get that the versions of the scholia have no direct connection with 1 and 2 Maccabees.

sources: "repairing" the altar and the service vessels took eight days; they were "occupied" with the spits for eight days; according to the Babylonian Talmud, the oil lasted eight days; and the printers of *Pesikta Rabbati* even emended the number of spits from seven to eight.[73] It is apparent that the redactors of the different versions of the scholia collected these traditions and patched them together. One of their methods of combining the units was presenting one episode as the reason for establishing the festival itself, and another as the reason for celebrating it for eight days. Scholium P presents the incident of the *oil* as the reason for establishing the festival, and prefaces the incident of the *spits* with the question, "Why did they determine to celebrate this one for eight [days]?" At the end of this episode we find the unconvincing "and they were occupied with it all eight [days]" appended to it.[74] In Scholium O, the question of "Why is it celebrated for all generations?" precedes the episode of the *spits*, while the building of the *altar* explains that "it is therefore celebrated for eight [days]." In other words, the motif of eight days was not originally included in these explanations. The tradition regarding the finding of oil also did not constitute an explanation for the eight days in the first stage of its evolution.

Scholium O makes no mention whatsoever of finding any oil, and it offers other reasons for celebrating Hanukkah. Scholium P presents an early version of an episode involving the finding of oil, and rather flimsily connects it to eight days, while also providing a series of alternative explanations. This same episode later appears in the Talmud in a more developed, crystallized form which has thrust aside other traditions. In actuality, the Babylonian Talmud is the sole source of an episode involving oil that lasted for eight days! This tradition eventually found its way into Scholium O and corrupted the original version; it even replaced the ancient variation of Scholium P appearing in the hybrid version. The power of this tradition, today and over the generations, compared to that of the other Hanukkah traditions, is an instructive example of the ultimate dominance that the Babylonian Talmud and its traditions achieved in Jewish literature and culture. This dominance, however, is a reflection of later cultural processes, and not of the approach of the Sages themselves. In essence, the reason for Hanukkah given by the Sages is the same reason as that found in Second Temple non-rabbinic sources: the Hasmonean renewal of the Temple service in its various forms. The supernatural basis of the story of the cruse of oil, as well as its representation as the only explanation for the celebration of Hanukkah, is a function of Babylonian inventiveness, motivated by literary rather than political reasons.

73 See n.44 above.

74 Indeed, this concluding sentence is not found in the parallel versions of Scholium O, the *baraita* of the Babylonian Talmud, or *Pesikta Rabbati*.

How the Rabbis Interpreted *Halakhah* to Meet the Needs of the People

A Study of Mortgages During the Period of the Rishonim

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Scholars such as Jacob Katz,[1] Haym Soloveitchik[2] and Edward Fram[3] have shown how *halakhah* was interpreted by the rabbis so as to conform with the economic needs of the Jewish community. This study, on the subject of mortgages, is in the same genre. It will explore how the Rishonim, in response to the economic conditions of their time, loosened the restrictions on mortgage practices so that Jews could engage in mortgages with each other without hindrance from rabbinic law.

Economic Background

During the eleventh and twelfth centuries, a commercial revolution took hold in Western Europe. The use of money broadened, and together with credit, "the great lubricant"[4] of the commercial revolution, trade, both local and international, increased. A growing class of merchants developed.[5] This process continued and expanded in the thirteenth century and the first half of the fourteenth century. Modes of transportation improved. Annual fairs for trading were established in major centers. Cities increased in size and population. Commerce and industry expanded providing people not only with the necessities of life but also with an increasing number of luxuries.[6]

1 The *Shabbes Goy* (Philadelphia, New York: The Jewish Publication Society, 1989) and *Tradition and Crisis* (New York: New York Univ. Press, 1993) among others.

2 "Pawnbroking, A Study in *Ribbit* and of the Halakah in Exile," *American Academy for Jewish Research, Proceedings* 38–39 (1970–71) 203–68 and "Shetar Besefer Haʾitur," *Tarbiz* 41 (1972) 313–24 among others.

3 *Ideals Face Reality, Jewish Law and Life in Poland, 1550–1665* (Cincinnati: Hebrew Union College Press, 1997).

4 Robert Lopez, *The Commercial Revolution of the Middle Ages*, 950–1350 (Cambridge: Cambridge Univ. Press, 1976) 72.

5 Carlo Cipolla, *Before the Industrial Revolution* (New York: W. W. Norton & Company, 1976) 190–93; Joseph O'Callaghan, *A History of Medieval Spain* (Ithaca, London: Cornell Univ. Press, 1975) 293–94.

6 Lopez, *The Commercial Revolution*, 56–84; Sidney Painter, *A History of the Middle Ages, 284–1500*

Jews were beneficiaries of the commercial revolution. In northern France, Jews were drawn to the fairs in the economic centers and found success in buying, selling and trading. They also engaged in international trade and took part in what eventually became their major occupation, lending money at interest to Christians.[7]

In the south, in Provence, Jews were active participants in the commercial life of the day. They were involved in local trade in the towns of France and in international commerce which took them to Italy and the east as well as to Flanders and England in the north. Many merchants were successful and some even acquired great wealth.[8]

In Spain, Jews were also active as merchants and as moneylenders.[9] In Barcelona, Jews were involved in the silk trade; they also manufactured and traded grapes and other agricultural products. In Saragossa the Jews attained pre-eminence in the manufacturing and marketing of cloth.[10] Jews prospered, protected by royalty, fulfilling an important function in the economic life of the Spanish community. It was not until the second half of the fourteenth century, with the onslaught of the black death, the outbreak of civil war and the murderous riots of 1391, that Jewish life in Spain declined and began its dark march toward extinction.

Both merchants and moneylenders needed capital for their enterprises. The greater the funds at their disposal, the greater was their opportunity for profit. One way for a person to acquire liquid assets was to mortgage his property.

What type of property did Jews own? Mortgage laws in the Talmud dealt chiefly with fields and vineyards because the people at that time were mostly farmers and vintners. But during the Geonic period, there was an enormous

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(New York: Alfred Knopf, 1983) 220–47; N.J.G. Pounds, *An Economic History of Western Europe* (London, New York: Longman, 1994) 343–412; Jean Favier, *Gold and Spices: The Rise of Commerce in the Middle Ages* (New York, London: Holmes and Meier, 1998) 31–52. O'Callaghan, *Before the Industrial Revolution*, 472–73; Angus MacKay, *Spain in the Middle Ages* (New York: St. Martin's Press, 1977) 76–77.

7 Lopez, *The Commercial Revolution*, 60–62; Robert Chazan, *Medieval Jewry in Northern France* (Baltimore, London: The Johns Hopkins Univ. Press, 1973) 15–18; Emily Taitz, *The Jews of Medi-eval France* (Westport, Connecticut, London: Greenwood Press, 1994) 8–9; Irving Agus, *The Heroic Age of Franco-German Jewry* (New York: Yeshiva Univ. Press, 1969) 101–44.

8 M. Adler, ed., *Sefer Masa'ot shel R. Binyamin* (London: Henry Frowde, 1907; repr.; Jerusalem: Hebrew Univ., 1960) 3–5; S. Schwarzfuchs, "France under the Early Capets," in Cecil Roth, ed., *The Dark Ages* (New Brunswick, N.J.: Rutgers Univ. Press, 1966) 159; H.H. Ben-Sasson, *A History of the Jewish People* (Cambridge, Mass.: Harvard Univ. Press, 1976) 469–71.

9 Isadore Epstein, *The Responsa of Rabbi Solomon ben Adreth of Barcelona* (New York: Ktav Publishing House, 1968) 1–2.

10 Yom Tov Assis, *Jewish Economy in the Medieval Crown of Aragon, 1213–1327* (Leiden, New York, Koln: E.J. Brill, 1997) 79–80.

migration to the cities. By the ninth century the Jews were primarily an urban population. To obtain the cash they needed, Jews mortgaged their homes.[11]

With the money obtained from mortgages, people could engage in enterprises, make a profit and then redeem their property. But for Jews there was a special problem. Based on the biblical law against lending on interest,[12] the Talmud contained a host of restrictions on business transactions.[13] Among them were included restrictions on mortgages.

Talmudic Law

When someone mortgaged a field, for example, the custom was, in talmudic times, for the lender to occupy the field during the mortgage period. During this time, the lender would enjoy the benefits of the field. The rabbis considered these benefits to be interest on the loan and the arrangement to be a breach of law.[14]

A number of suggestions were made by the sages to provide ways for mortgages to be handled in a legal manner. One, which was approved by all, was called a Mortgage of Sura. In a Mortgage of Sura it was agreed that when the mortgage period (in the Talmud's example, ten years) was over, the borrower would get back his property without having to repay the loan. The lender's profit from the property during the time of the loan served as repayment for the loan.[15] The sages allowed this type of mortgage; they considered it to be, basically, a sale rather than a loan; the property owner was selling the produce of his land for a certain number of years for a certain sum of money.

There was, however, a problem with the Mortgage of Sura. Lenders did not like it. They did not like the idea of forgiving the loans they had provided; the property that they were temporarily acquiring might turn out to be unprofitable or less profitable than they had imagined. Though the Mortgage of Sura was allowed by the rabbis, there was little interest in putting it into practice.[16]

11 This was reflected in the responsa literature. Questions about the mortgage of houses were addressed in the eleventh century to Alfasi (see below nn.26–27), in the twelfth century to Rabad (Rabenu Avraham ben David, *Teshuvot Ufesakim*, Joseph Kafah, ed. [Jerusalem: Mossad Harav Kook, 1964] #131), in the thirteenth century to Rashba (See below n.57.), in the fourteenth century to Rosh (*She'elot Uteshuvot Lerabeinu Asher ben Yehiel* [Jerusalem: Makhon Yerushalayim, 1994) klal 91, #5] and in the fifteenth century to Rashbash (see below n.74).

12 Exod 22:24, Lev 25:35–37 and Deut 23:20–21.

13 *B.B.Meṣiᶜa*, chap.5.

14 See Hillel Gamoran, "The Talmudic Law of Mortgages in View of the Prohibition Against Lending on Interest," *HUCA* 52 (1981) n.27.

15 *B.B.Meṣiᶜa* 67b.

16 Haym Soloveitchik points out that the Mortgage of Sura was unattractive to borrowers as well because such mortgages were for an extended time period. Borrowers who had the means

Another type of mortgage suggested in the Talmud was called a Mortgage with a Deduction (נכייתא).[17] In this case the lender compensated the borrower whose property he was using, by deducting a fixed amount from the debt each year. There was a dispute among the talmudic authorities as to whether or not this arrangement was legitimate. Rabina thought that it was and, in fact, used a Mortgage with a Deduction himself. But three other sages, R. Kahana, R. Papa and R. Ashi demurred and would not employ such a mortgage.[18]

The Geonic Period

The controversy as to whether Mortgages with Deductions were legal continued in the geonic period. R. Jacob, Gaon of Sura in the early ninth century, allowed such mortgages as long as the annual deduction was worth at least one-fourth of the value of the produce consumed.[19] Other Geonim of Sura placed no such requirements on the size of the deduction and, in fact, made it clear that any deduction, even a tiny one, was enough to make the arrangement legitimate. Several of the Geonim from Sura stated that Mortgages with Deductions were customary in their day.[20]

However, the leading Pumbedita teachers, R. Sherira Gaon, in the tenth century, and his son, R. Hai Gaon, in the eleventh, declared that Mortgages with Deductions were not permissible.[21] R. Sherira stated that Mortgages of Sura were acceptable because they were like sales, but that Mortgages with Deductions were outright loans, and when the lender benefited from the borrower's property, he was taking interest. As the geonic period came to a close, the question as to whether or not a mortgage with a fixed annual deduction could be allowed was not decided.

North Africa

The eleventh century North African sage, R. Ḥananel, followed the views of the Pumbedita Geonim. Commenting on Rabina's decision to engage in a Mort-

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to repay their debt after a short or an intermediate period of time were unable to do so. Under the rubric of the Mortgage of Sura, they could not reclaim their property for many years. "Shetar Besefer Haʾitur," 316–17.

17 *B.B.Meṣiʿa* 67b.

18 *B.B.Meṣiʿa* 67b.

19 *Sefer Ha-Metivot*, B. M. Lewin, ed. (Jerusalem: n.p., 1934) 70; R. Isaac b. Abba Mari, *Sefer Haʾitur* (part 1; Warsaw: Defus Yosef Unterhendler, 1883; repr. Jerusalem: n.p., 1987) Potiki, 65b; R. Samuel Hasardi, *Sefer Haterumot* (Jerusalem: Makhon Or Hamizrah, 1988) gate 46, 3:20, p. 900.

20 See Hillel Gamoran, "Mortgages in Geonic Times in Light of the Law against Usury," *HUCA* 68 (1997) 97–108.

21 *Sha'are Tzedek* (Jerusalem: Kelal U-Ferat, 1971) part 4, gate 2, nos. 2 and 12. For a discussion of the question as to why the authorities at Pumbedita disallowed Mortgages with Deductions

gage with a Deduction, R. Hananel states that, "the law is not in accordance with Rabina."[22] The only legal form of mortgage, according to R. Hananel, is the Mortgage of Sura.[23]

R. Isaac Alfasi, in his *Halakhot*, expresses the same view as does R. Hananel. Alfasi says:

> A Mortgage with a Deduction, according to Rabina, is allowed, and he, himself, consumed with a deduction, . . . but R. Kahana, R. Papi and R. Ashi did not consume with a deduction . . . and we agree with them and not with Rabina.[24]

Alfasi reiterates his rejection of Mortgages with Deductions in a responsum:

> As for a Mortgage with a Deduction, concerning which you inquired, we do not allow it for it is the dust of interest, and thus did all of the venerable rabbis teach, that it is forbidden.[25]

However, in several other responsa, Alfasi allows Mortgages with Deductions. For example, in the case of a six month mortgage of an apartment where the lender lives in the apartment for the mortgage period, Alfasi says that the lender "does not have to pay rent, but should take a deduction according to the custom of the land regarding mortgages."[26]

How can Alfasi's inconsistency be explained? He forbids Mortgages with Deductions in the *Halakhot* and in one responsum, but allows them in other responsa. Some scholars[27] have suggested that Alfasi forbade Mortgages with

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as opposed to the Geonim of Sura who allowed them, see Gamoran, "Mortgages in Geonic Times," 104–7.

22 *Perush Harav Hananel al Hashas, Masekhet Bava Metzia* (Jerusalem: Mossad Harav Kook, 1988) *b.B.Meṣiʿa* 67a, 133.

23 R. Isaac of Vienna Or Zarua (Zhitomir: n.p., 1862; Jerusalem: n.p., repr. 1976) *Piske Bava Metzia* 5, #195, p. 28a, col. 1.

24 Alfasi pages, *b.B.Meṣiʿa*, chap. 5, 38a.

25 *She'elot Uteshuvot R. Yitzhak b. Ya'akov Alfasi*, Dov Tzvi Rotstein, ed. (New York: Makhon Tzvi Lemoreshet Gedole Yisrael, 1975) #2. In Responsum #105, Alfasi also states that a lender who profits from the fruit of a borrower's field consumes the dust of interest, but it is not clear, in this case, that the lender took a deduction from the debt.

26 Rotstein, *She'elot Uteshuvot*, #7. Other versions of this responsum are found in *She'elot Uteshuvot Harif* (Bilgorai, 1935) #156 and in *She'elot Uteshuvot Rabeinu Yitzhak Alfasi* (Jerusalem, 1974) #162. See also Bilgorai #155. A similar view is expressed in Rotstein #26.

27 Rotstein, *She'elot Uteshuvot*, #23 and Joseph Rivlin, "Al Kalkala Vehalakha – Hamashkanta Vehamekher Hahozer," in *Iyunei Halakha Umishpat, in honor of Professor Aaron Kirschenbaum, Dinei Yisrael* 20–21 (2000–2001) 362. See also Soloveitchik, "Pawnbroking," 318–19 and n. 21 and Joseph Rivlin, *Shetare Kehilat Alisena* (Ramat Gan: Bar Ilan Univ., 1994) 57.

Deductions in his native North Africa but, when communicating with the Jews of Spain, bowed to their local custom. This writer, however, believes that it is not necessary to maintain that Alfasi expressed different views to different communities, but rather, that his responsa reflect the conflict he felt between the dictates of the law and the practices of the community. In the responsa where Alfasi allows Mortgages with Deductions, the questions posed to him dealt with cases where lenders were already enjoying the fruit of the property they had occupied. The question was whether the lender could continue to benefit from the property after the mortgage period had expired. Alfasi made it clear, in each case, that this was permitted only if the mortgage document had included a provision for allowing the lender to maintain his use of the property after the pre-arranged loan period had ended. As for the benefit which the lender gained from the property during the mortgage period, Alfasi bowed to the "custom of the land."[28]

It should also be noted that rabbinic law does not mandate the return of a lender's profit once it had been taken.[29] Alfasi makes this clear when he states, "At the outset, it is forbidden to establish such a mortgage, but if it has already been set up, then we do not have to cancel it."[30] It was perhaps with this in mind that Alfasi stood aside and allowed Mortgages with Deductions to continue. From a theoretical standpoint, he agreed with the Geonim of Pumbedita and R. Hananel that Mortgages with Deductions were a violation of the law, but when faced with the ongoing practice in the community he served, he yielded.

Germany

In Germany, the first to allow Mortgages with Deductions was R. Gershom, Me'or Hagola, who lived during the first part of the eleventh century. He was asked[31] about the case of a man who mortgaged his vineyard, received a fixed annual deduction from his debt and allowed the lender to take a specified amount of produce from the vineyard. The questioner wanted to know if this was allowed or whether it was forbidden because the lender was benefiting from the borrower's vine. R. Gershom responded that the arrangement was allowed as long as it was clear that the lender could profit only to the extent that the vineyard yielded its fruit. Were the vineyard to fail, then the lender

28 Rotstein, *She'elot Uteshuvot*, #7. In the Bilgorai #156 version of this responsum, the phrase "custom of the place" is used. Also of note is that even in the *Halakhot* (Alfasi pages, *b.B.Meṣiʿa*, chap. 5, 38a), Alfasi admits that, "Mortgages are always Mortgages with Deductions."

29 See Gamoran, "Talmudic Law of Mortgages," 159–60.

30 Rotstein, *She'elot Uteshuvot*, #105.

31 *Teshuvot Rabenu Gershom Me'or Hagola*, Shlomo Eidelberg, ed. (New York: Yeshiva Univ., 1955) #27 and #28.

would still have to make the deduction from the debt and would suffer a loss. According to R. Gershom, the creditor was not like a lender who takes interest, rather, "he is like a buyer." He provides money to the property owner, makes an annual deduction from the debt and thereby buys the right to take a certain amount (not guaranteed) of fruit from the vineyard.

France

Later in the eleventh century, R. Solomon b. Isaac (Rashi) of Troyes, like R. Gershom, expressed the idea that it was the risk which the lender took which made it legal for him to profit from a Mortgage with a Deduction.

> He deducts a fixed amount from the debt each year, for it appears like he sells it to him, and there is a doubt [as to whether the lender will make a profit], for even if [the field or vineyard] is stricken and there is no produce, [the lender] still deducts the fixed amount. Therefore, even when [the lender] takes more from him [than the deduction] it is not considered interest.[32]

Emphasizing that it is the risk that the lender takes which allows him to take the produce of the mortgaged field, Rashi makes a distinction between houses and fields. Profits from a house were, in Rashi's view, a sure thing which were not offset by a nominal deduction from the debt. Therefore he disallowed Mortgages with Deductions in the case of houses.

> It is forbidden to lend on a house and to live in it even with a deduction . . . But this is not like the mortgage of a vineyard, for in that case there are times when he does not take anything from it, and even here [in the case of a vineyard], he is buying the produce with a deduction with a doubt [as to whether the vineyard will produce fruit]. But here [in the case of a house], this one [the lender] always benefits and there is no doubt.[33]

Another point which Rashi makes regarding Mortgages with Deductions relates to a distinction made in the Gemara between places where it is customary to force lenders to leave the property whenever the borrower is able to repay his debt, and places where lenders cannot be forced to leave during a certain period of time. The difference is important because if there is a time frame during which the lender has uncontested control of the property and

32 Rashi's commentary on *b.B.Meṣiᶜa* 67b–68a, s.v. Be'atra Demesalki.

33 Rashi's commentary on *b.B.Meṣiᶜa* 64b, s.v. Ka Mashma Lan; Israel Elfenbein, ed., *Teshuvot Rashi* (New York: n.p., 1943; repr. Jerusalem: n.p., 1968) part 2, #342.

unquestioned rights to the fruits of the property, then the transaction may be considered similar to a sale. In return for the deduction which he makes from the debt, the lender purchases the rights to the property for a specified time period.

In the Gemara, Rava is cited as saying that in a place where the lender can be forced to leave whenever the borrower wishes to repay the debt, the lender may not enjoy the produce of his mortgage without taking an annual deduction.[34] From this statement, Rashi concludes that his ruling, that Mortgages with Deductions are allowed for fields and vineyards, but not for houses, applies only in places where a borrower can bring his money and force the lender to leave at any time. In places where the lender has the use of the property for a fixed time, and the borrower cannot force him out until that time period is over, the transaction is considered more like a sale than a loan; such a mortgage, according to Rashi, is allowed with or without a deduction.[35]

By allowing a mortgage, with or without a deduction, when the lender cannot be evicted, and by allowing mortgages of fields and vineyards with a deduction even when the lender can be evicted, Rashi takes a significant step toward loosening the restrictions against mortgage transactions.

The distinction which Rashi made between houses and fields was incorporated by R. Moses Maimonides (Rambam) into his *Mishnah Torah.* He states, "If he mortgages his courtyard and the like with a deduction, it is the dust of interest ; if he mortgages his field with a deduction, it is allowed."[36] Furthermore the Rambam makes it clear that a token deduction is sufficient to meet the requirements of the law. "What is a deduction?" asks the Rambam. And he answers, "For example, if he lent him a hundred dinars . . . and deducted a silver ma'ah each year."[37] In the Rambam's example it would take six hundred years of deductions to eliminate the debt. Yet, as far as fields and vineyards were concerned, it was allowed.

Rashi's grandson, R. Jacob Tam, of Ramerupt, goes even a step further than Rashi and Rambam. He says that the lender's profit from a *house* also has its risks. In the case of a field, the crops can suffer from a drought or a flood, and in the case of a house, R. Tam asserts, it can burn down or collapse. R. Tam's point is that as long as the lender deducts a fixed amount from the debt each year, there is no prohibition against mortgages.[38]

R. Tam points out that the Mishnah's rule, prohibiting a lender from living in a borrower's house rent free or at a discount,[39] applies when, after a loan is

34 *B.B.Meṣiʿa* 67b.

35 Rashi's commentary on *b.B.Meṣiʿa* 67b, s.v. Be'atra Demesalki.

36 *Hilkhot Malveh Veloveh* 6:7.

37 *Hilkhot Malveh Veloveh* 6:7.

38 *Tosafot, b.B.Meṣiʿa* 64b, s.v. Velo.

39 *M.B.Meṣiʿa* 5:2.

given, the lender asks for such a concession. This is forbidden in the case of a house and in the case of a vineyard as well. But if an arrangement is made, at the time of the loan, for a Mortgage with a Deduction, R. Tam allows it whether it is a house that is mortgaged or a field or vineyard.[40]

Furthermore, R. Tam comments on the reason that the rabbis in the Talmud, R. Kahana, R. Papa and R. Ashi, did not consume with a deduction. He says that their reason for not consuming with a deduction was not because it was forbidden; they avoided this action because they practiced a special form of piety. They considered themselves to be among the pious who, at times, avoided even what the law allowed. On the other hand, Rabina, who did consume with a deduction, did so out of humility; he did not consider himself and did not want to be considered among the pious ones. R. Tam's view was that, in Rabina's opinion, Mortgages with Deductions were allowed by law, and that was good enough for him.[41]

R. Isaac of Dampierre (Ri), a nephew of R. Tam, a great-grandson of Rashi and one of the leading Tosafists, agrees with Rashi that a Mortgage with a Deduction is like a sale and should be allowed. He also agrees with R. Tam that it should be allowed for houses as well as for fields and vineyards.[42]

Provence

R. Abraham b. David of Posquierres (Rabad), who interpreted the laws of partnerships in a way that allowed business loans to proceed without being unduly encumbered by the usury ban,[43] also makes allowances for mortgages. He supports the position of Rabina who consumed with a deduction and, in reference to the opposing view of R. Kahana, R. Papa and R. Ashi, points out that the Talmudic text says that the three scholars "*did not benefit* [from mortgages with deductions]; it did not say that they *forbade* [such mortgages]." Rabad's view (like that of R. Tam) is that these sages were especially pious and refused to allow themselves to take part in mortgages with deductions, but that they

40 *Sefer Hayashar Lerabeinu Tam, Helek Hahidushim*, Simon Schulzinger, ed. (Jerusalem: n.p., 1980) #592; *Tosafot, b.B.Meṣiᶜa* 64b, s.v.Velo.

41 *Tosafot, b.B.Meṣiᶜa* 67b, s.v. Rabina.

42 *Piske Harosh, B. Meṣiᶜa* 5:16–17, 64b. Among the sages of Ashkenaz, only R. Eliezer b. Joel Halevi (Rabyah) is recorded as holding the view that Mortgages with Deductions are forbidden. This report comes from R. Meir HaKohen of Rothenberg in the *Hagahot Maimoniyot* (*Hilkhot Malveh Veloveh* 6:7); R. Moses of Coucy, in *Sefer Mitzvot Gadol*, follows the position of Rashi that such mortgages are permissible for fields but not for houses (Alter Farber, ed., *Lo Ta'aseh* [1991] #193, p. #194).

43 Rabenu Avraham ben David, *Teshuvot Ufesakim*, Joseph Kafah, ed. (Jerusalem: Mossad Harav Kook, 1964) #46. This responsum can also be found in *Temim De'im* (Warsaw: Difus Yaᶜakov Zʾev Unterhendler, 1897) #60. See Hillel Gamoran, "Investing for Profit, A Study of Iska up to the Time of Rabbi Abraham ben David of Posquieres," *HUCA* 70–71 (1999–2000) 161–62.

did not disallow the general population from engaging in this practice.[44]

The Talmud had ruled[45] that in a place where they may evict the lender whenever the borrower comes up with the money, a mortgage is allowed only if a fixed annual deduction is taken. Rabad was aware that when mortgages were written for a specific time period, and the time expired, the borrower would be allowed to pay off his debt and retrieve his property at any time. Such a mortgage would then be considered as being in a place where the lender could be evicted, and thus would be disallowed since the time period for the deductions had expired.

Rabad had a solution for this problem. He followed a formula first proposed by R. Isaac Alfasi,[46] and stated that after the mortgage period elapsed, a Mortgage with a Deduction was still allowed if the contract included the clause, "You may profit [from this property] with a deduction as long as this mortgage remains in your hand."[47] This meant that if Rabad's suggestion was followed, mortgages remained legal and operable even after their stipulated time period had expired.

Furthermore, Rabad held that, as a rule, mortgages in his day could be considered as being in a place where they do not evict the lender. These are his words:

> The custom has spread, in all the places, that [the borrower] can redeem his mortgage only at the beginning of each year, for if he comes one day into the year, he is not allowed to redeem it until the end of the year. And this surely is a place where they cannot evict him; and he is like one who, after the first day of the year, sells [the produce of his field] each year.[48]

With this reasoning, Rabad freely allowed Mortgages with Deductions. The lender had bought the produce of the property for the price of the deduction; the produce might be large and the deduction small; it might be a bargain purchase for the lender, but it was still considered a purchase and was allowed.

Finally, Rabad stressed that the universal custom in his day was to engage in Mortgages with Deductions. He cited a Talmudic passage, "Go out and see what the people are doing."[49] As one sage put it, "Rabad found a way to accommodate the custom that we practice."[50]

44 R. Solomon b. Adret, *Hidushe Harashba al Masekhet Bava Metzia* (Jerusalem: Ora, 1961) 150–51.

45 *B.B.Meṣiᶜa* 67b.

46 See responsa listed above in note 26.

47 Adret, *Hidushe Harashba*, 151.

48 Hasardi, *Sefer Haterumot*, gate 46, 3:20, p. 902.

49 Adret, *Hidushe Harashba*, 151. The quotation is found in several places in the Talmud, for example, *b.Ber.* 45a.

50 Hasardi, *Sefer Haterumot*, gate 46, 3:20, p. 901.

Spain

Evidence of the practice of Mortgages with Deductions is found in Spain early in the period of the Rishonim. A collection of contracts from the city of Lucena, written between 1020 and 1025, contains two contracts which provide for such mortgages. The form reads:

> I have received from him so many dinarim, and for them I have mortgaged to him that courtyard and houses which I own here in Lucena . . . This is a complete mortgage with such and such a deduction each year . . . [He] may live in the courtyard for a whole year.[51]

R. Judah of Barcelona, early in the twelfth century, compiled a book of contracts and makes provision in his collection for a Mortgage with a Deduction. The borrower mortgages his field and says to the lender that he may harvest the fruit of the field, taking an annual deduction from the debt, until the money is repaid.[52]

The contracts of Lucena and the collection of R. Judah of Barcelona show that Mortgages with Deductions were practiced in Spain. This presented a dilemma in the thirteenth century for the great Spanish authority, R. Moses ben Nahman (Ramban), not unlike the dilemma faced by his "great teacher," R. Isaac Alfasi, two centuries earlier. In theory, Ramban believed that Mortgages with Deductions were wrong, for in his talmudic commentary, he says that "[a Mortgage with a Deduction] is the dust of interest and every mortgage is always forbidden except for the Mortgage of Sura,"[53] but in a responsum, where he needed to give a practical answer to a practical question, he states that, "one may consume with a deduction."

This conflict between theory and practice is openly faced in another responsum; Ramban begins his answer by repeating what he said in his talmudic

51 Rivlin, *Shetare Kehilat Alisena*, 131–35. See also 54–59.

52 S.J. Halberstam, *Sefer Hashetarot Lerabeinu Yehuda Habarziloni* (Berlin: Defus T. H. Ittskovski, 1898) 63–64. R. Judah speaks of two kinds of Mortgages with Deductions, one in which the borrower agrees to mortgage his property from the start, the other in which the lender does not occupy the property unless the borrower fails to repay the debt by a certain date. In both cases the contracts provide for an annual deduction.

53 R. Moses b. Nahman, *Kol Hidushe Haramban* (Jerusalem: n.p., 1929; repr.; Jerusalem: Or Olam, 1991) *B.Meṣiʿa* 5, 67a, p.141b. The fourteenth century author of *Magid Mishnah*, R. Vidal of Tolosa, bases his analysis on *Hidushe Haramban* and says simply that Ramban agrees with Alfasi, *Hilkhot Malveh Veloveh* 6:7.

R. Meir Halevi Abulafia of Toledo (Ramah), an older contemporary of Ramban, expresses views similar to those of Rashi and Rambam, allowing Mortgages with Deductions for fields and vineyards but forbidding those of houses and stores even if they include annual deductions.

commentary, "A mortgage with a yearly deduction is forbidden whether in a place where they evict him or whether in a place where they do not evict him in light of what our teacher [Alfasi] stated in the *Halakhot*."[54] But he continues by admitting that this has been a highly divisive issue among the rabbis,

> and the end of the matter is that it is a very shaky law, and that the decision of our great rabbi [Alfasi] to forbid depended on R. Kahana, R. Papa and R. Ashi who would not take profit from [a mortgage] with a deduction, and it can be said that they did so to be stringent upon themselves . . . And the whole subject is a grating one.

Ramban concludes his responsum by, figuratively, throwing up his hands and saying, "The end of the matter is: Let the community engage in this practice, for this is an undecided law which is weak and unstable in our hands."

A contemporary of Ramban, R. Samuel Hasardi, wrote more on business matters than any of the other Rishonim. In his work, *Sefer Haterumot*, he recounts the views of earlier teachers, but states that the universal practice in his time is for mortgage lenders to take an annual deduction from their debts and to profit from the mortgaged property. He says, "We need to understand and to explain how this custom has spread and come to be permitted."[55] R. Samuel then explains the position of Rabad. In a place where mortgages are set up for a fixed amount of time, Mortgages with Deductions are allowed. Furthermore, all mortgage contracts are written for a specified time period and therefore all Mortgages with Deductions are permissible. Again, following Rabad, he states that although the pious among the rabbis do not engage in such mortgages, the people, as a whole, are not forbidden to do so. Finally, accepting Rabad's arguments, but still, apparently, feeling apprehensive about rejecting the norms advanced in Alfasi's *Halakhot*, he concludes his discussion in the mode of the Ramban, "We must not erase what is in the hands [of the people] and we need to allow the community to engage in this practice with the permission of the law which [in this case] is shaky, unstable and undecided."[56]

The contracts of Lucena and the collection of contracts of R. Judah of Barcelona testify to the existence of Mortgages with Deductions in Spain in the elev-

54 Simha Assaf, ed., *Teshuvot Haramban* (Jerusalem: Mekitze Nirdamim, 1935; repr.; Jerusalem: n.p., 1967) #41 and Hayyim Dov Shual, ed., *Teshuvot Rabenu Moshe ben Nahman* (Jerusalem: Mossad Harav Kook, 1975) #42. Apparently, the Ramban was not aware of the responsa of Alfasi which make allowances for Mortgages with Deductions. Neither was his contemporary, R. Samuel Hasardi, aware of these responsa. Both refer only to Alfasi's prohibition of such mortgages as stated in the *Halakhot*.

55 Hasardi, *Sefer Haterumot*, gate 46, 3:20, p. 900.

56 Hasardi, *Sefer Haterumot*, p. 903.

enth and twelfth centuries. In view of the comments of Ramban and R. Samuel Hasardi, it is clear that these practices continued into the thirteenth century. The great Spanish authorities of the thirteenth century whose natural inclination was to follow the conservative teachings of the Geonim of Pumbedita, of R. Hananel and of Alfasi's *Halakhot*, were resigned to accept what was going on in their communities. This was a case of where the rabbinic sages, rather than affirming *halakhah* to guide the people, observed the community's custom and followed the people.

We have seen how the restraints against mortgage practices were loosened over the generations. This process continued with the rulings of R. Solomon ben Adret of Barcelona (Rashba), the leading rabbinic authority during the second half of the thirteenth century. Thousands of questions came to him from all over the Jewish world including several on the subject of mortgages. One had to do with meat rights.[57] The king granted a certain Jew a daily supply of lamb or its monetary equivalent. This was a privilege that was passed from one generation to the next. The question which came before Rashba dealt with someone who had inherited this right from his father. This man then took a loan and mortgaged his right to the meat with the proviso that he receive an annual deduction from the debt. From then on, the lender collected the daily allowance of meat. In the question that came to Rashba, the borrower claimed that the transaction was illegal in that it violated the ban on interest. The borrower wanted to be paid back the value of the meat taken by the lender or, at least, to stop the lender from taking further meat. The borrower maintained that even if the mortgage of a field with a deduction was legal, it was because there was some risk to the lender; the field might not yield its crop. But in a case where the king had guaranteed the meat rights, the lender's profits were certain, and the arrangement should be disallowed as usurious.

R. Solomon, however, rejects the argument of the borrower. He replies that since the lender takes an annual deduction from the debt, the arrangement is legal. "Every case of a deduction is like a sale, except that he gives him a bargain price, and therefore we allow a Mortgage with a Deduction." Before concluding his responsum, Rashba adds that when a Jew enjoys a right from the king, it is even more risky than the case of a field or a vineyard, and, therefore, there is no reason to disallow the transaction.

Another question addressed to Rashba dealt with the case of a person who mortgaged some books.[58] When the time came to repay the loan and the borrower asked for the return of the books, the lender replied that the books had

57 R. Shlomo b. Adret, *She'elot Uteshuvot Rashba* (Jerusalem: Makhon Tif'eret Hatorah, 1990) part 2, #213.

58 Adret, *She'elot Uteshuvot Rashba*, part 2, #332.

been lost in an unavoidable accident. Rashba answers that the issue depends on whether or not an agreement had been made for the lender to take a deduction from the debt for the use of the books. Without a deduction the arrangement is strictly forbidden, "but if they stipulated that there be a deduction, then it is allowed."

A third question on mortgages which came before R. Solomon dealt with a house.[59] Reuben mortgaged his house to Simon; Simon's travels took him to another land; Reuben then mortgaged the house to Levi; Levi then lived in the house for two or three years; when Simon returned from his travels he demanded from Levi rental payment for the years that he had stayed there; Levi responded that Reuben, the owner of the property had mortgaged it to him and that he did not have to pay rent.

Rashba responds that because the questioner omitted vital information about the mortgage contract, he will have to make certain assumptions. He will assume that the contract was written in the normal fashion of the time, namely, that the lender was to make a deduction from the debt each year, that the mortgage was for a specified time period, and that the mortgage was to remain in the hands of the lender as long as the debt was unpaid. Rashba concludes, then, that even if Reuben did not mortgage the house to Levi until after Simon's mortgage period had expired, if the debt had not been repaid, the profit from the house belonged to Simon; thus Levi must pay Simon for the rent. In the last sentence of this responsum, Rashba disputes the opinion of Rashi and Rambam by saying, "our custom is to consume even the mortgage of a house with a deduction."

In all three of the responsa cited, the one dealing with meat rights, the one dealing with books and the one dealing with a house, a common thread runs through Rashba's replies: Mortgages are allowed if the lender takes an annual deduction from the debt. In making this ruling, Rashba rejects the opinion of Alfasi (as expressed in the *Halakhot*) which forbids mortgages even with deductions and rejects the views of Rashi and Rambam who allow such mortgages for fields but not for houses. Rashba, in fact, goes a step further than Rabad did in allowing Mortgages with Deductions. Whereas Rabad admitted that the Talmud would not allow a mortgage with a deduction in a place where the creditor could be evicted any time the debtor repaid the debt (but maintained that all mortgages in his day were written for a specified time period), Rashba claims that it does not matter whether or not the creditor can be evicted. In all cases, in Rashba's view, Mortgages with Deductions are allowed.[60]

Furthermore, Rashba rules that a requirement made by Rabad was not necessary. Rabad had said that the mortgage contract should include a clause to

59 Adret, *She'elot Uteshuvot Rashba*, part 2, #381.

60 Adret, *She'elot Uteshuvot Rashba*, part 3, #43.

the effect that as long "as this mortgage remains in your hand, you may profit [from the property] with a deduction." In Rabad's view, it was this stipulation that made it possible for the lender to profit even after the mortgage period had expired. But Rashba does not require this clause. He rules that as long as the borrower has not actually said to the lender that he is ready to repay the debt, the mortgage continues with its annual deduction, and the lender may continue to profit from the property.[61]

Rashba lived only a generation after Ramban, but a sharp contrast is discernable in their attitudes toward Mortgages with Deductions. Ramban is hesitant to allow such mortgages.[62] His inclination is to defer to previous halakhists who forbade such transactions. He reluctantly agrees to this activity because the people are engaging in it and he feels powerless to deny them an activity which has been practiced for many years.

Rashba, on the other hand, is unapologetically lenient. In his view, there is no question that Mortgages with Deductions are allowed and that rabbinic law does not stand in their way. This change in outlook from Ramban to Rashba may be explained partly by the continued growth of industry and commerce which took place in the late thirteenth century and in the first part of the fourteenth century.[63] During the last quarter of Rashba's life, Aragon was ruled by Jaime II. The King protected the Jews and encouraged their full participation in the economic life of the Crown.[64] Rashba was, in fact, involved in the economic life of the times. He came from a family of money lenders, and until he accepted a rabbinic post in Barcelona, was himself a financier.[65]

The change in outlook from Ramban to Rashba may also be a reflection of the type of literature they produced. Ramban's major works are commentaries in which he devotes great attention to defending the views of the Geonim and R. Isaac Alfasi, whereas Rashba, although he wrote commentaries, authored thousands of responsa. More than any other medieval sage, Rashba's time was consumed in responding to questions addressed to him, and more than any other medieval sage, his ear was attuned to the economic circumstances of his time.[66] In any case, by the end of the thirteenth century, the practice of Mortgages with Deductions was widespread and was approved by the leading rabbinic authorities.

61 Adret, *She'elot Uteshuvot Rashba*, part 3, #43.

62 The same may be said of R. Samuel Hasardi.

63 J. N. Hillgarth, *The Spanish Kingdoms 1250–1516* (Oxford: Clarendon Press, 1976) 32–42; Bernard Reilly, *The Medieval Spains* (Cambridge: Cambridge Univ. Press, 1993) 141–44; MacKay, *Spain in the Middle Ages*, 77; O'Callaghan, *Medieval Spain*, 470.

64 Assis, *Jewish Economy*, 60–63, 78–79, 87–94.

65 Yom Tov Assis, *The Jews of Barcelona 1213–1291*, Regista of Documents from the Archivo Capitular (Jerusalem: The Henk Schussheim Memorial Series, 1988) 7–8.

66 Joseph Rivlin put it this way: "Among the walls of the academy the sages of Israel tended toward

In the fourteenth century, the same question that had been posed to Rashba, about mortgaging the king's meat privileges, came before R.Yom Tov ibn Asevilli (Ritba).[67] Like his teacher, Rashba, Ritba also ruled that it was legal to mortgage such rights, and he added:

> All Mortgages with Deductions for fields and vineyards are permitted, and this case [of meat privileges] is similar to a field, for it is not completely secure, for there could be accidents and circumstances where there could be unusual expenses. Even more so [is this mortgage of meat privileges allowed] since the custom in all these lands is to allow even the mortgage of a house with a deduction.

Thus we see that a leading Spanish authority of the generation after Rashba took a position allowing all types of Mortgages with Deductions.

There was one more important proposal on mortgages which was made during the period of the Rishonim. It came from the outstanding sage, R. Asher ben Yehiel (Rosh), who lived during the second half of the thirteenth and the first quarter of the fourteenth century. In his *Pesakim,* Rosh reviews the opinions of previous teachers on the subject of mortgages and concludes that the law is in accordance with Rashi and the Tosafists who hold that Mortgages with Deductions are allowed.[68]

In the course of his comments, Rosh makes reference to the long ignored Mortgage of Sura. The Mortgage of Sura, as stated above, called for the mortgaged property to be returned to its owner at the end of the mortgage period without any payment of money. Because of the requirement to return the property without getting the loan repaid, lenders had avoided this type of mortgage for generations. But R. Asher suggests that it is possible, in the case of a Mortgage of Sura, for the lender to return the property before the expiration of the mortgage period, and for the lender, "to deduct from his debt according to the years that he has profited." This made the Mortgage of Sura, which was permitted by all, to be similar, in many respects, to a Mortgage with a Deduction.[69]

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stringency, but when they were asked to make practical legal decisions, their inclination was toward leniency, especially when dealing with situations already solidified by the custom of the place." "Al Kalkala Vehalakha," 360.

67 R.Yom Tov b.Abraham Asevilli, *She'elot Uteshuvot*, Joseph Kafah, ed. (Jerusalem: Mossad Harav Kook, 1959) #44.

68 *Piske Harosh, B.Meṣiʿa* 5:34, 68a; *Tur Yoreh De'ah, Hilkhot Ribit*, #172; R.Yeruham b. Meshullam, *Sefer Mesharim* (Venice: n.p., n.d.; repr.; Jerusalem: n.p., 1975) 8:5. In a responsum (*She'elot Uteshuvot Lerabenu Asher ben Yehiel* [Jerusalem: Makhon Yerushalayim, 1994] klal 13, #7) the Rosh points out that Rashi forbids a lender to live in a house that has been mortgaged to him whereas R.Tam allows it. Rosh then comments that whoever behaves stringently will be blessed.

69 *Piske Harosh, B.Meṣiʿa* 5:34, 68a.

Now this proposal of the Rosh was not entirely new. Rabbi Moses (b. Hanasi R. Todros) of Narbonne, in the twelfth century, had said that the common practice in his community of making a small deduction each year was allowed. He said that since "it was possible to completely pay off the mortgage with this kind of a deduction, a little bit at a time," it was like a Mortgage of Sura which all agreed was permissible. But R. Moses' suggestion was rejected by the Ramban[70] and by R. Samuel Hasardi[71] because in the case of a Mortgage of Sura the lender does not leave the property until the mortgage period has expired when he receives no money. In other words, in the case of a Mortgage of Sura, it is not so much a loan, as a rental for a fixed time period, but in the case described by R. Moses of Narbonne, where the loan period is not completed and the borrower has to repay a portion of his debt, it *is* a loan and the lender's profit looks like interest.

Rambam, *in the Mishneh Torah*,[72] had stated:

> A person may lend someone a hundred dinars on the mortgage of a house or a field, and stipulate that after ten years the property will return to its owner free, and [the lender] is allowed to consume the profit during the ten years even if it is worth a thousand dinars a year, for this is like someone who rents at a bargain.
>
> And likewise, if the owner of the field stipulates with him that whenever he brings the money, he will deduct ten per year, and he may evict him from it, it is allowed.
>
> And if the borrower stipulates that whenever he wants, he will calculate how long he lived there and will return to him the balance of the money and he will depart, this as allowed, for this is only a rental, and whatever conditions are made in a rental are allowed.

The Rambam did not call this a Mortgage of Sura, but the permission he grants to allow the parties to cut short the loan period, which if extended would result in the cancellation of the debt, appears to be exactly what had been proposed by R. Moses of Narbonne and was rejected by later authorities. In any case, the Rosh elaborates on his suggestion in a responsum.[73] When asked whether a mortgage with a deduction is allowed, the Rosh replies:

> If someone wants to do it in a way that is completely permissible, he should engage in a Mortgage of Sura, and let him extend the time to a

70 Nahman, *Hidushe Haramban, B.Meṣiʿa* 5, 67a, 141b–142a.

71 Hasardi, *Sefer Haterumot*, gate 46, 3:20, p.901.

72 *Hilkhot Malveh Veloveh* 6:8.

73 Isaac Yudolov, ed., *She'elot Uteshuvot R. Asher b. Yehiel* (Jerusalem: Makhon Or Hamizrah, 1994) 91:6.

> hundred or two hundred years so that the deduction will be small. And the Mortgage of Sura is such that the borrower is able to make him leave any time he wishes, and he deducts according to the years.[74]

All through the years, the rabbis had allowed the Mortgage of Sura, but it had been ignored by the business community as being unprofitable and impractical. What lender would want to forego the repayment of his debt as required by the Mortgage of Sura? The profit from the property for five years or ten years was simply not enough to compensate the lender for loss of his loan. But here, the Rosh's idea was that the law did not limit the number of years allowed for a Mortgage of Sura. The lender could deduct a tiny amount from the debt each year, like in the case of a Mortgage with a Deduction, but, formally, the contract would be written as a Mortgage of Sura. When the borrower repaid his debt, a small deduction would be made from it, and the lender would profit from his use of the property, and since the years of the Mortgage of Sura were extended, the lender had no need to fear that he would ever have to give back the property without repayment of the debt as called for in the formula of the Mortgage of Sura. R. Asher's proposal accomplished the aim of R. Tam, Ri, Rabad and Rashba, to allow mortgages to proceed without hindrance, but avoided the controversy which had swirled for hundreds of years as to whether a Mortgage with a Deduction could be allowed.

Two students of the Rosh noted in their writings that Mortgages with Deductions were allowed. One was R. Yeruham, who wrote a work on monetary law during the second quarter of the fourteenth century.[75] The other was the Rosh's son, R. Judah. A dispute arose between a man who took a loan and mortgaged some barrels with the proviso that a specified amount would be deducted from the debt each year. When the time came to return the barrels and collect his debt, the borrower wanted the lender to deduct not just the small amount provided for in their contract, but rather the full worth of barrel rentals. He said that otherwise the lender's profit would be usury. When the matter came before R. Judah, he ruled in favor of the lender. A Mortgage with a Deduction was allowed whether for real property or for movable goods; it did not violate the law against usury.

R. Judah's older brother, R. Jacob b. Asher (Tur) followed in the footsteps of his father in suggesting a truncated Mortgage of Sura:

> The only mortgage that is allowed [by all] is the Mortgage of Sura where he mortgages it to him for a certain number of years, and writes in [the

74 Rosh's preference for the Mortgage of Sura over the Mortgage with a Deduction is also expressed in Moshe Hershler and Joshua Dov Grodzitsky, eds., *Tosefot Harosh al Masekhet Bava Metzia* (Jerusalem: n.p., 1959) 67b, 180–181.

75 Meshullam, *Sefer Mesharim*, 8:5.

> contract] that at the end of these years the land will return without money. And in this way it is allowed even if he greatly extends the time until he reaches the point where only a small amount [is deducted] each year . . . and it is not like a loan, but rather, as if he sold him the produce of each year for such and such a sum even though he may make him leave any year. And when he evicts him, he deducts for the produce according to the years that he consumed . . . And the time may be extended so that only a tiny amount is deducted each year . . . and it is as if he sold him the produce of each year for such and such a sum.[76]

With this thorough explanation, R. Jacob widened the door which his father had opened and removed any rabbinic hindrance to mortgage transactions.

The foremost rabbinical authority in the middle of the fourteenth century was R. Nissim (Ran) who lived in Barcelona. In his talmudic commentary, the Ran appears, like the Ramban, to be conflicted. At first he rejects the Mortgage with a Deduction as the dust of interest,[77] but then gives permission for the practice which is taking place in his community and writes, "Today the universal custom is to engage in Mortgages with Deductions . . . and we hold that [Mortgages with] Deductions are allowed in all places."[78] In the fifteenth century, R. Joseph Habiba, the Spanish commentator, acknowledges, "The Mortgage with a Deduction is now the universal practice." And he justifies what goes on in the community by explaining:

> [The lender] deducts a fixed amount from the debt, and thus it appears that [the borrower] sells him [the produce of the property]. And since it is possible that the produce of the property might spoil and not provide any profit, and [the lender] would still have to make the same deduction, therefore if he takes more [than the amount of the deduction], it is not considered interest.[79]

North Africa

R. Simeon b. Tzemah Doron (Rashbatz) was the spiritual leader of the Jewish community of Algiers during the first half of the fifteenth century. He points out[80] that although Rambam disallowed Mortgages with Deductions in the case

76 *Tur Yoreh De'ah, Hilkhot Ribit*, #172.

77 R. Nissim b. Reuben Girondi, *Hiddushe Haran* (Jerusalem: Makhon Harry Fishel Lederishat Hatalmud Umishpat Hatorah, 1994) *B.Meṣiᶜa* 67b. He also rejects the extended Mortgage of Sura as proposed by Rosh and Tur.

78 Girondi, *Hiddushe Haran*, *B.Meṣiᶜa* 67b.

79 R. Joseph Habiba, *Nimuke Yosef*, *B.Meṣiᶜa* 5, 38a of Alfasi pages.

80 R. Simeon b.Tzemah Doron, *Sefer Hatashbetz*, Joel Katan, ed. (Jerusalem: Makhon Or Hamizrah, 1998) part 3, #103.

of houses, there were later sages who allowed them, and "we follow the one who is lenient and allows this practice."[81]

Rabbi Solomon b. Simeon Doron (Rashbash) succeeded his father as head of the Algiers Jewish community. It is clear from his responsa that he follows his father's position on the subject of mortgages. In one case a lender lived in a mortgaged house for only part of the mortgage period and did not want to make a deduction from the loan for the time that he did not live there. R. Solomon responds:

> If, when the mortgage was arranged, they stipulated that he would give him a deduction, then he must give him the deduction whether he lived there or not, because they stipulated.[82]

In another responsum, R. Solomon was asked about the Mortgage of Sura, whether it was possible for the borrower to evict the lender before the contract years expired. R. Solomon understands perfectly that if the Mortgage of Sura is interrupted before the expiration of its contract years, then the borrower does not get his land back without payment, as stated in the Sura contract. He understands that the lender makes an annual deduction from the debt, but, if the years are not fully completed, the debt is not fully canceled. Rashbash answers that if a provision for an annual deduction from the debt is made with an allowance for an early return of the property, then it is allowed. The formulation of the contract as a Mortgage of Sura makes it like a rental or a sale and not like a loan, and therefore it is permitted.[83]

Conclusion

We have seen that at the end of the geonic period, the rabbis were divided over the issue of mortgages. Among the earliest Rishonim, R.Hananel declared mortgages with deductions to be illegal, and Alfasi was ambivalent on the matter. But, step by step, the sages allowed the law to be loosened.

First, Rashi (and Rambam) allowed Mortgages with Deductions if the mortgaged property was a field or a vineyard, where the lender took some risk that the land might not provide a yield. Then R. Tam (and Ri) allowed such mortgages on houses and stores as well as on vineyards and fields, explaining that there was a risk with these properties as well.

81 In another responsum, Rashbatz is asked about mortgage contracts. He replies that "A mortgage without a deduction is forbidden," thus implying (but in this case not saying explicitly) that a mortgage with a deduction is allowed. Doron, *Sefer Hatashbetz*, part 1, #39.

82 Solomon b. Simeon Doron, *Sefer Harashbash*, Moses Sobel, ed. (Jerusalem: Makhon Or Hamizrah, 1998) #66.

83 Doron, *Sefer Harashbash*, #401.

Then Rabad, in the twelfth century, made the point that all Mortgages with Deductions were allowed because they were made for a specific time period. The laws against interest did not apply, he said, because the lender was, in effect, buying the property's profit for that time period. Furthermore, Rabad made provision to allow the mortgage to continue after the fixed loan period had come to an end. All that had to be done, he proposed, was to include a clause in the mortgage contract stating the lender could continue to profit from the property for as long as the debt was unpaid.

In the thirteenth century, Rashba ruled in a number of cases allowing for Mortgages with Deductions. And, as for dealing with mortgages that continued after the stipulated time frame had expired, Rashba did not require the inclusion of any special clause in the contract. According to Rashba, the lender could continue to profit from the property until the loan was repaid.

Finally, in the fourteenth century, Rosh interpreted the Mortgage of Sura in such a way that it became, to all intents and purposes, the same as a Mortgage with a Deduction. If the contract was composed in the form of a Mortgage of Sura, which was allowed by all, and the years were extended, perhaps even to hundreds of years, then the debt would never be canceled as called for in the Mortgage of Sura. Instead, the profit would go to the lender while a small deduction would be made each year. Rosh's interpretation made it possible for people to engage in a Mortgage with a Deduction which was defined as a Mortgage of Sura.

During the period of the Rishonim, Jews were highly involved in trading and in moneylending. They continually required credit so that they could earn their livelihoods. They often mortgaged their properties in order to obtain the cash with which to carry on their businesses. Phrases which appeared in the works of the rabbis such as, "Go out and see what the people are doing," "We must not erase what is in the hands [of the people]," or "the universal custom is to engage in Mortgages with Deductions," were a clear indication that the rabbinic authorities were well aware of the economic practices of their day. It is not surprising that they interpreted the law so as to make mortgages among Jews legal.

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To Be As Others

E. E. Lisitzky's Re-presentation of Native Americans

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In the course of modern Hebrew literature's few dacades of taking root, flowering and waning in America, no poet has been more Americanized, prolific and varied in his output than Ephraim E. Lisitzky (1885–1962). As his fellow Hebrew writers, Lisitzky Americanized his *oeuvre* by sharing his impressions of the life, culture and landscape he encountered in the Golden Land. However he was also among a handful of Hebrew writers to address extensively the most marginalized minorities in the U.S., Indians and blacks. Of the latter, Lisitzky published a collection of poems, *Bo'Oholey Khush* (*In the Tents of Kush*, 1953). Writing of American Indians, though, Lisitzky's epic poem, *Medurot do'akhot* (*Dying Campfires*, 1937), is a unified story consisting of many original Indian folktales.

This study seeks to illustrate the measure of Lisitzky's immersion in America by tracing his encounters with Indian tales throughout his literary career. It also seeks to identify the sources of these "original" (since they were already rendered into English and organized by non-native editors) tales, and understand their treatment by the Hebrew poet. As illustrated, Lisitzky did not adhere fully to the tales as found, but impressed them with his literary and ideological stamp, exhibiting Puritanical, maskilic values by extirpating the tales of their savage temperament or by rendering them in a heightened, literary style.

American Hebrew literature, the poetry and prose fiction composed almost exclusively by immigrants to the New World, is a tapestry of forms, trends and genres. Today it serves as a repository of early experiences and impressions as these writers encountered, and later embraced the American way of life. In terms of literary forms and styles, this literature bears the gamut of Hebrew belles lettres, ranging from the traditional European Hebrew literary models to the innovativeness of modernism as affected by American and English literature in the early decades of the twentieth century. In the case of a few exceptional individuals, principally Gavriel Preil, this literature has also given rise to trends which were at the forefront of a Hebrew modernism, paralleling similar developments in *'Eretz Yisra'el.*[1]

1 T. Carmi and Robert Friend, "By Way of a Preface," and "Introduction," in Gabriel Preil, *Sunset Possibilities and Other Poems*, trans. with an introduction Robert Friend (Philadelphia: The Jewish Publication Society, 1985) xiii–xv, xvii–xxiii; Yael Feldman, *Modernism and Cultural Transfer* (Cincinnati: Hebrew Union College Press, 1985); and דן מירון, „בין הנר לכוכבים: על שירת גבריאל פרייל," בתוך גבריאל פרייל, אספן סתווים – שירים: *1972–1992* (ירושלים: מוסד ביאליק, 1993) 273–381.

However, the criterion of modernism is not the sole means by which we measure the attainments and value of American Hebrew literature. Another, though by no means the only alternative yard-stick, is by its attentiveness to the American socio-cultural scene. It is this feature which will be considered in the foregoing, and that, too, by a rather narrow gauge of Hebrew writers' cognizance of, sensitivity to and representation of extant and oppressed minorities, specifically Native Americans. When considered in this light, Hebrew literature may be the one which made the subject most prominent among all contemporary immigrant literatures – Yiddish, Polish, Italian, and even Irish. Of the many Hebrew writers to recognize the existence of other minority groups in America, three leading poets have received closest scrutiny for their quantitative, and qualitative contribution. The following explores the contributions of only one, the last and most productive of the three.

Although chronologically third among his fellow Hebrew poets to compose a book-length epic poem centered on the life and culture of Native Americans, Ephraim Eliyahu Lisitzky is arguably the most American. To be sure, other Hebrew writers have also devoted thought, energy, and art to this subject, composing short pieces or, in passing, referring to Indians in their poetry – and, more rarely, in prose.

Lisitzky (Minsk, 1885 – New Orleans, 1962) spent his childhood orphaned of his mother in Slutzk, where he excelled in talmudic studies. Following his father to Boston in 1900, Lisitzky resumed his studies in the U.S., spending a brief time at the Rabbi Yitzḥak Elḥanan Yeshivah. Later, he also studied to be a *shoḥet* and, some years later, received a degree as a pharmaceutical chemist from Marquette (Milwaukee). Lisitzky spent years teaching Hebrew and Judaica in Ontario, Canada, New York State, Milwaukee, and Boston. In 1918, he was recruited to head the New Orleans Communal Hebrew School, where he became known as "*ha-moreh*," and where he remained until his retirement. Despite his early plans to emigrate to *'Eretz Yisra'el*, Lisitzky forever exhibited an ambivalence about this dream, visiting there only twice (1934 and 1956). In his later years, Lisitzky was awarded honorary doctorates (JTSA, 1949; HUC-JIR, 1960) for his literary achievements.

When considering focus and sheer quantity, three Hebrew poets – Silkiner, Efros and Lisitzky – have outdone their fellows in writing about the American Indian. Of them, Lisitzky is conspicuously the most prolific in terms of the absolute number of works on the subject. His magnum opus on Native Americans, *Medurot do'akhot* (*Dying Campfires*, 1937),[2] also bears the most authentic marks

2 (מדורות דועכות (ניו יורק: עוגן, 1937 – Translated also as "Dying Embers," in A.R.Malachi, "Ephraim Lisitzky – Pioneer Poet," trans. Rose Brener, *New Orleans, The Jewish Ledger*, 1 (c.1954) 51; and as "Smouldering (and Smoldering) Fires," under "Lisitzky, Ephraim E," in John Simons, ed., *Who's Who in American Jewry: A biographical Dictionary of Living Jews of the United States and*

of Indian folktales. Unlike this epic, few works by Hebrew writers explored a subject so remote from their immediate concerns, a civilization with which Jews had little direct contact. On the others hand, nearly each and every Hebrew poet and author in America has incorporated the subject of American Blacks into his work, in large measure or not, of which the most extensive is, again, Lisitzky's *Be'Oholey Khush* (*In the Tents of Cush*, 1953).

Thematically, it is Lisitzky's work that makes the definitive contribution on two of the most distinct subjects of the American experience. To be sure, his poetic *oeuvre* falls short of those of his fellows in giving expression to another favorite subject, alienation in the Big City. Nonetheless, it is he who is most deserving of the designation of the most American of Hebrew poets. His work stands as the foremost expression in depicting quintessential themes set in America's landscape and brought into contact with the Jewish experience. Prior to, and in the wake of *Medurot doʿakhot* and *Be'Oholey Khush*, he wrote extensively on Blacks, retold other Indian and American folktales – among them the tale of Johnny Appleseed – guiding his readers through New Orleans and the South, North Carolina, Buffalo, and Canada's Ontario province, among other venues.[3]

The following discussion is an endeavor to examine Lisitzky's evolving treatment of and regard for Native American folk tales. Unlike his fellow Hebrew poets, it was he who consistently revisited the subject over a considerable literary lifespan. For that reason alone the study will, of necessity, address his earliest and ultimate writings which pertain to the American Indians. However, precisely because his most accomplished work on the subject compositionally, qualitatively and quantitatively remains his epic long poem, *Medurot doʿakhot*, more attention must be devoted to it and its coalescence out of a disparate collection of Indian tales.

In terms of his writing on the American Indians, Lisitzky's early poems offer insights into preliminary approaches which were to distinguish himself from others. These steps anticipate the accomplishments of *Medurot doʿakhot*, though the latter also departs from them in a number of significant ways. Moreover,

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Canada, volume 3, 1938–1939 (New York: National News Association, 1938) 671; and in Lisitzky's obituary notice, "Ephraim Lisitzky, Hebrew Poet, Translator and Educator, Dies," *New York Times*, 27 June, 1962.

3 Discussion of his other poems is in a number of locations in this study. The story of Johnny Appleseed is incorporated into his poem, "ḥasidim bʾumot haʿolam": „חסידים באמות העולם," כמו היום רד (תל אביב: מחברות לספרות, 1960) 204–272, ובפרט 283–300; ועל זה ראה גם דניאל פרסקי, „מזמרת אמריקה העברית," הדואר מב, שנה 41, גל׳ י (כ"ט טבת תשכ"ב; 5 בינואר 1962) 148–149. An excerpt of Lisitzky's own poems of Native-American origins, "On the banks of the Niagara," appear in A.R.Malachi, "Ephraim Lisitzky – Pioneer Poet," p. 51; the article is a translation of א.ר. מלאכי, „אפרים א. ליסיצקי (ליובלו)," הדואר לד, שנה לג, גל׳ יב (י"ח שבט תשי"ד; 22 בינואר 1954) 221–222.

Lisitzky's post-*Medurot do'akhot* poetry goes even further to mark an evolution in the the poet's treatment of his subject, while at the same time representing his repeated forays into the realm of the Other, a subject almost completely abandoned by his fellow poets who also wrote long poems about Indians.

As the foregoing will demonstrate, Lisitzky's treatment of Native American tales drew on extant published works readily available to him. Reliance on authentic texts made his work more of a transposition of original works than a fanciful product of his imagination – as in the case of Silkiner or Efros. The presence of authentic tales from different Native American tribes, although fused to form a single fabric, also allowed for a representation of the Other in a nearly unmediated fashion. Lisitzky's admiration for the tales is evident by his close adherence to the narratives. Nevertheless, as a close examination of the translation of selected tales will demonstrate, Lisitzky altered them in subtle and meaningful ways to reflect his tastes, and to "civilize" them. In so doing, he made the tales more palpable to readers of Hebrew literature, including their transformation as bearers of ethical, moral and intellectual values that he, Lisitzky, as a product of the Hebrew *haskalah*, wished to convey to his readers.

Moreover, to further distinguish himself from his predecessors, and avoid the image of an also-ran late-comer on the scene, Lisitzky deflected reader attention from other Hebrew writers by unabashedly crediting William Wordsworth Longfellow's "The Song of Hiawatha" for being his model. This inspiration, we surmise, is not for Lisitzky's composition of the shorter poetic compositions about Indians, but for *Medurot do'akhot*, which appeared later. In the forward to the latter, Lisitzky acknowledged his indebtedness to Longfellow's method, foregrounding for readers the role of Indian lore and legend as primary sources of his inspiration:

> The historical and mythic material embedded in the poem is a collective kind: historical and mythic events which are attributed to various tribes and eras . . . My purpose was not to write a historical-folkloristic record, in which scientific precision is essential, but to rescue and bring into our Hebrew poetry an echo of the sounds of Indian songs that fell silent. . . . This collected matter was woven into a cultural fabric of two tribes and one era which will serve as backdrop for a poetic fabric . . .
>
> I admit, and unabashedly, that it is not without some doubts and hesitations that I accepted this meter. I was concerned about the combination: a theme from Indian life and a meter by which "The Song of Hiawatha" was created is an opportunity for a distorted prejudgment: an imitation of Longfellow! And if I finally accepted it – and it was inevitable that one accept it . . . The myth and folklore, legend and song, combined with incidents of a great plot, tragic struggles and difficulties of the Indian tribes are an ocean which Longfellow did not miss by more than a drop. And

> the meter, by which "The Song of Hiawatha" was created, was not invented by Longfellow, for the *Kalevala* preceded "The Song of Hiawatha" in its use (*Medurot*, 3–4).

For decades, we find that more than a mere echo of these words reverberated in many a critical analysis or appreciation of *Medurot do'akhot*. Reception of this long poem is documented in studies representing the gamut of Hebrew scholarship in America and Israel. Nevertheless, few scholars rose to the challenge of reaching beyond an almost mechanical repetition of Lisitzky's own words. Instead, their expressions are general and perfunctory as they either summarize its plot or identify analogical relationships between the poet's biography and his literary output. The fact that readers were unfamiliar with the culture of Native Americans was not ameliorated by critics who, presumably, should or could have done so. In place of reiterating what was readily found in Lisitzky's introduction, scholars could have exploited the opportunity to demonstrate Lisitzky's strategy of bridging cultural gaps, eliminating some of the glaring stereotypes concerning Indian civilization. Alternatively, studies are still awaiting to be conducted regarding Lisitzky's poetics, diction and place in the Hebrew literary canon. Instead of filling some of these gaps, readers encountered scholarly summaries of the work or thoughts, admittedly valuable in themselves, as to the relationship between the poet's spirit, or biography, and this work.[4]

Familiarity with Lisitzky or his *oeuvre* has generated comments to the effect that in this work, too, the principal message is Lisitzky's expression about love and understanding among diverse peoples seeking stability, identity and a

4 See S. ש. בס, „מדורות דועכות," גליונות, שנה שלישית, חוב' ה (כט) (תמוז, תרצ"ג) 441–443; a similar view, reflecting Lisitzky's own words as phrased in his introduction, is presented in articles by Agaf, Dar, Kariv and Silberschlag. In these, they describe, without further elaboration, Lisitzky's work on the Indians as being founded on folkloristic sources. And see: מ. אג"ף, „א. א. ליסיצקי (שמונים שנה להולדתו)," חזות (21 בינואר 1965); י"א דר, „שני קולות בשירה העברית (,כמו רד היום' לאפרים א. ליסיצקי ו,הקול מבעד לענף' לש. זמיר)," ידיעות אחרונות, 12 באוגוסט 1960, „7 ימים," עמ' 6: אברהם קריב, „עם ספרים – אפרים א. ליסיצקי: מדורות דועכות," דבר, 5 בנובמבר 1937, גל' 3789, עמ' 7; יצחק זילברשלג, „לאפרים א. ליסיצקי בן השבעים וחמש: סבא של שירתנו במאריקה," הדואר מ, שנה כב (י"א ניסן תש"ך; 8 באפריל 1960) 400, גל' 39. Abraham Epstein, in his survey of Hebrew writers in America, also repeats Lisitzky's introductory words that *Medurot do'akhot* is a collection of folktales, legends, beliefs and Indians' ways which the poet collected and combined into a single whole. Epstein, however, does not elaborate or specify beyond this generalization. אברהם אפשטיין, סופרים עבריים באמריקה (תל אביב: דביר, 1952) 39–65, ובפרט 56, 57, 63. Adir Cohen repeats similar words in his survey of Lisitzky's literary contributions. Lisitzky, asserts Cohen, "draws on Indian mythology and blends reality with legend, idyl with dramatic plot": אדיר כהן, „עולם יצירתו של אפרים א. ליסיצקי (במלאות לו שבעים וחמש שנה)," גזית יח, א–ב (מאי 1960) 16–18, ובפרט 17. וכן אף אצל יעקב ק. מיקלישנסקי, תולדות הספרות העברית באמריקה (ירושלים: ראובן מס ו„עוגן," 1967) 48; וגם יעקב קבקוב, שוחרים ונאמנים: מסות ומחקרים על הספרות והתרבות העברית באמריקה (ירושלים: ראובן מס, 1978) 172.

homeland. To be sure, the plot of the story confirms these views in that Lisitzky presented a tale of strife, envy, conquest, love and national loss recounted with deep pathos and pain.[5] However, scholarship and critics have overlooked significant issues in his literary encounters with the American Indian.

Contrary to some observations, Lisitzky's preoccupation with America's Blacks and Indians should not be dismissed simply as a romantic escapist tendency, nor as mere identification with the lot of people whose fate reminded him of that of the Jews. It needs to be seen as part and parcel of his engagement with everything American. Writing of Native Americans is no romantic escape for him as much as an expression of the poet's sympathy for the downtrodden, vilified and powerless in America, a metaphor for "the tragedy of the annihilation of the Jewish people."[6] Moreover, although the plot also glosses over cruelties perpetrated by Indians on Whites, a full representation of Indian-White relations – including mutual brutalities – is not the concern of a romantic tale such as this.

Needless to add, it is also true that the poems – in this work as in others – are mirrors of the poet's inner world, temperamentally and in terms of worldview. Read this way, Lisitzky's works reflexively direct the encounter with the Other inward, as an expression of the poet's search for the self through an imagined encounter with his subject. Observed from this perspective, and without regard for the context of numerous other writers' representation of Blacks or Indians, Lisitzky's *Medurot do'akhot* is more than an encounter with an exotic subject distant from the poet. Instead, it is a redemptive process of the self in that it is "organic and 'necessary' on his way from himself to himself." It is also possible that, in terms of poetics, poems of this kind liberate Lisitzky from the cumbersome expression of his other works. In other words, this encounter may represent the poet's idealization of the subject, offering up to his readers a molded model of the subject – as imagined by the author – in place of the implied model – as imagined by the implied readership.[7]

5 ש. י. פינלס, „ספרותנו החדשה באמריקה: שירת אפרים א. ליסיצקי,” גליונות טו, חוב׳ ג (אב-אלול תש”ג) 138–141; ש. י. פנואלי, „בשדה ספר: אדם על אדמות” גליונות כב, חוב׳ ז-ח (אדר-ניסן תש”ח) 62–64.

6 יעקב קבקוב, „משירת מהגרים לשירה אמריקאית (למלאות 10 שנים לפטירתו של א. א. ליסיצקי),” הדואר נא, שנה 51, גל׳ כח (כ”ז סיון תשל”ב; 9 ביוני 1972) 473; ובמחקרו המקיף, שוחרים ונאמנים ..., 167–172. שמואל בלומינפלד, „לזכרו של אפרים א. ליסיצקי: כליל קוצים - כליל תפארת,” הדואר מג, שנה מב, גל׳ כז (כ”ג אייר תשכ”ג; 17 במאי 1963) 495–496; יצחק זילברשלג, „השירה העברית בעולם החדש,” אחיספר, ערכו שמואל ניגר ומנחם ריבולוב (ניו יורק: קרן לואיס למד, תש”ד) 240. Also, Samuel Blumenfield, "Ephraim Lisitzky – American Hebrew Bard," *The Chicago Jewish Forum* (Spring 1964) 204–7.

7 וראה גרשון שקד, פנים אחרות ביצירתו של ש”י עגנון (תל אביב: הקיבוץ המאוחד, 1989) 91 ואילך; ישעיהו רבינוביץ, „יצירתו של אפרים א. ליסיצקי,” בצרון מא, חוב׳ ד (אדר תש”ך; פברואר-מרץ 1960) 188–200, ובפרט עמ׳ 196; הד לרעיון זה מצוי אף אצל זבולון רביד, „עלבון הילדות שלא נתכפר (לזכר אפרים א. ליסיצקי: כ”ג בסיון תשכ”ב - כ”ג בסיון תשל”ב),” הדואר נא, שנה נא, גל׳ כח (כ”ז סיון תשל”ב; 9 ביוני 1972) 474–475.

The poet's manner of representation is not accidental. As in the case of poetry concerning his Eastern European world, the poet expresses a longing in these works to a primeval age, one preserving that which is presumably naive and authentic about the subject being represented, whether of Jews or Indians. By his yearnings he does not negate the existence of evil, poverty or sufferings of his protagonists, although he does see their spiritual nobility and a virtue no longer to be found in his present circumstances.

Reception of Lisitzky's work is also characterized by reading strategies which range from a consideration of its plot to Zionist, universal and biographical perspectives. In addition, when considering its narrative structure, scholars have taken note that some of the microcosmic details of the plot of *Medurot do'akhot* anticipate the greater ones. Thus, for example, the failed love between the protagonists prefigures the unsuccessful union between their respective tribes against the conquest by the Europeans.[8] Moreover, read in light of the works by Silkiner and Efros, it is the European incursion which disrupts the pristine existence of the natives also in Lisitzky's composition, ringing down the curtain on a bankrupt world of myth and magic.

Departing significantly from those strategies, though engaged with the exotic elements of Lisitzky's poems, is a study by Ruth Arazi. Writing in 1987, she identified common themes between Native American tales and Lisitzky's poetry.[9] Arazi was the first to examine the poet's claims about employing Indian tales and themes in his epic work. Among her findings is that individual tales, formed into a single fabric by Lisitzky, derive their themes from Indian folklore. As she demonstrates, Lisitzky embellished his story with familiar Indian themes and tales purposefully selected to lend support to the poet's sentiments. Contextualizing his work, Arazi asserts that,

> From a certain point of view, Lisitzky's *oeuvre* comprises a kind of Hebrew interpretation of Longfellow's work in that he emphasized and foregrounded those elements deemed significant and crucial in the historical process, which brought about the demise of the Indians.[10]

While not exactly an "interpretation of Longfellow's work," Lisitzky's composition, as will be demonstrated, draws on the model set by the author of "The

8 מנחם ריבולוב, כתבים ומגילות (ניו יורק: עוגן, 1942) 187–189; הלל בבלי, „אפרים א. ליסיצקי," גליונות ל"א, חוב' ח'–י' (אב–אלול 1954) 92–100.

9 Ruth Arazi, "The American Indian in American Hebrew Poetry" (Ph.D. diss.; New York Univ., 1987) (Heb.). Although a similar generalization is made by Silberschlag, in his "HaShira Ha'Ivrit ba'Olam heḥadash," p. 240 (see n. 6 above), merely echoes the poet's words. Silberschlag does not illustrate his assertion that Lisitzky's work is "an adaptation of raw Indian folktales."

10 Arazi, "The American Indian," 94.

Song of Hiawatha." Moreover, Arazi's case of the historical processes which contributed to the demise of Native Americans is not made persuasively by Lisitzky, whose poem is merely a microcosmic presentation of but a single encounter between Europeans and Indians. Comparing the two, Arazi observes that while Longfellow composed his work

> ... out of a series of legends and tales of various past eras, ... Lisitzky ... clearly distinguishes the mythic layer from that of the plot, introducing the mythic into [his] work as an unambiguous interweaving of tales out of the past, stories passed down *verbatim*, from father to son. In so doing he was careful to present the legends as they appear in the scientific records of Indian legends.[11]

As we shall see below, Arazi's claims call for some adjustment and expansion, though they represent a pivotal step in critically interrogating Lisitzky's poetic composition, and illuminating our understanding of the poet and his sources. Absent from all the reviews, however, is that for but a handful of readers, none strove to thoroughly examine collections of Indian folktales, and not merely a few, as does Arazi, which were apparently available to Lisitzky, and which had a decisive influence on his representation of Indian culture.

An investigation of Native American folktale anthologies published by the early half of the twentieth century confirms that Lisitzky did not merely rely upon themes extant in Indian folktales, but translated many, adapting them into a continuous fabric which became the plot of his long work. Lisitzky was not wrong when he declared that he was preserving in, and for, Hebrew literature the vanishing songs of Native Americans. In doing so, he followed Longfellow's lead in terms of the compositional method of "The Song of Hiawatha," which served as the canonical masterwork for Lisitzky.

Lisitzky's interest in Native Americans was doubtless stimulated by the lingering resonance Longfellow's "The Song of Hiawatha" (1854)[12] had on readers, in addition to his personal proclivity for the romanticism voiced by the pillars of Hebrew literature, Bialik and Tschernichowsky. "Hiawatha" itself emerged out of nineteenth century English Romanticism and Americans' curiosity, mounting sympathy and interest in the life and culture of Indian tribes who were being decimated at the time. In light of the popularity of Longfellow's poem, and the ongoing inquisitiveness about "primitive" cultures, which helped to spur the sciences of American anthropology and folklore, numerous published compilations and collections of Native American folk-tales depicted the religious

11 Arazi, "The American Indian," 96.

12 William Wadsworth Longfellow, "The Song of Hiawatha," *The Poetical Works of Longfellow* (Boston: Houghton Mifflin Co., 1975) 113–64.

beliefs, lifestyle and cultures of many of the over five hundred and fifty American Indian tribes in the United States.[13]

By the *fin de siecle*, and with the first decades of the twentieth century, numerous anthologies of Indian life were available to readers. The continued popularity of Longfellow's composition, no doubt, featured centrally in inducing poets, authors and scholars to offer up their version of similar accounts, be they literary or scientific, make corrections to his presentation, and explore the sources incorporated into his compilation. Longfellow's corruption of the Indian sources, claimed the critics, resulted from his reliance on Western models, among which were the Finnish Eddas and a Western unrhymed trochaic tetrameter in which he wrote his poem.[14] Subsequent anthologies, therefore, appear as a "corrective" to his, in that they presented folktales in the form of prose or a more "authentic" poetry, presumably intent on representing the original more faithfully.

It was in this cultural environment of emergent interest in the exotic Other that immigrant Hebrew writers contributed their unique perception of Native Americans. Most remained unfamiliar with anything more tangible than the verbal representation of Indians. And, as we shall see below, Lisitzky appears to be no different, although he also followed Longfellow's model more faithfully than his fellow Hebrew writers. His activity not merely Westernized the Native Americans – as many English renditions of their myths have also done – but also Americanized the already Westernized Jews. In terms of method, presentation techniques and rhythm (in most instances), Lisitzky's *Medurot do'akhot* bears undeniable and clear marks of Longfellow's "The Song of Hiawatha." Lisitzky's admission as to the influence of Longfellow's epic not withstanding, though, a closer scrutiny of his work reveals features which distinguish his work from that of his mentor.[15]

13 Figure cited by Wesley Thomas, in Susan Williams, "Inaugural pow wow to bring remembrance, renewal, awareness," *Bloomington (Indiana) IU Home Pages*, vol. 6, issue 10, Friday, 1 March 2002, p. A1.

14 See Arazi, "The American Indian," 97; Ernest J. Moyne, *Hiawatha and Kalevala* vol. 80, no. 2 of *FF Communications* (Helsinki: Soumalainen Tiedeakatemia Academic Scientiarum Fennica, 1963). The meter is also recognized by M. Steiner, who, without identifying any specific Indian folktales as being at the root of this composition, notes the powerful link in the plot between love and death. He also notes another link to Longfellow's work in that Lisitzky's composition, too, is comprised of twenty-two chapters and an introduction: משה שטיינר, „מוטיבים אינדיאניים בשירה העברית-אמריקנית,״ בתוך דברי הקונגרס העולמי השישי למדעי היהדות ג, ערך אביגדור שנאן (ירושלים: האיגוד העולמי למדעי היהדות, 1977) 509.

15 All evidence indicates that Lisitzky read Longfellow's poem in the original prior to preparing his own, as he also acknowledges in his introduction. However, his first encounter with it may have been in the 1913 Hebrew translation prepared by S. Tschernichowsky, one of the Hebrew poets most admired by Lisitzky. Tschernichowsky, along with H. N. Bialik, comprised the two pillars of Hebrew poetry in the period known as the *teḥiyah*, or national renaissance.

Though influenced by Hebrew poets – primarily Saul Tschernichowsky in this instance – who presented Hebrew translations of the world's epic tales in poetic form, Lisitzky may have also seen anthologies of the kind prepared by Leland and Prince, in which the Indian tales are presented individually in poetic form, unlike Longfellow's synthetic approach.[16] Resembling Lisitzky's introductory opening, Leland observes that the vast amount of Indian poetry was vanishing among the Indians themselves, while Americans remained uninformed of the value of these which, he adds, "were, in fact, all songs."[17] The intent of his work was to offer up a more genuine version of representative Indian tales, in their more pristine state so as to educate American readers about Indian culture. Also inspired by Lonnrot's *Kalevala* and Homer's great epics, Leland transposed the poetry of the Indians "into English metre,"[18] explaining that the original "Amerindian" song's "primitive rhythm is quite irregular, following only a general cadence rather than observing any fixed number of beats in each line."[19] Unlike Longfellow and Lisitzky, who compiled a disparate collection of tales into a single work, Leland's anthology – while preserving and retaining individual works in a more "authentic" way – also departs from these by centering on one figure, Kuloskap, Lord of Light and Creator of All.

Another indication that the original tales were actually in a poetic form to be sung is to be found in the *Walam Olum*, a cultural and folkloristic chronicle of the Lanape Indians of Delaware. "The chants of the WALAM OLUM are obviously in metrical arrangement. The rhythm is syllabic and accentual, with fre-

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Though meriting a separate study in itself, the impact this poet had on Lisitzky is emblematic of his influence on many Hebrew poets in America. Tschernichowsky, more than most Hebrew poets, prepared translations of world masterpieces, epic poetry in particular, for Hebrew readers. And though not fully in imitation of his work in this sphere, Lisitzky and his predecessors may have been inspired by his attainments to pursue their depiction of other life and cultures of Indians and Blacks in the New World. To judge from the prolific literary and critical reaction to Tschernichowsky's translation of "The Song of Hiawatha," the resonance to his rendition lasted many decades in Hebrew letters. The impact of this work, then, may have been more inspirational on Lisitzky than the accolades to Longfellow in English. For by the early twentieth century, these became gradually diluted by harsh criticism and a new modernism in American poetry. Lisitzky's admiration of Longfellow is also discernible by an observation he made in a letter to the Hebrew poet Gabriel Preil, dated 15 August 1954, in which Lisitzky tells of a visit he made to his brother-in-law (no name provided) in St. Paul, Minnesota, noting that his home stood not far from the Minnehaha waterfall: ולא רחוק ביתו ממפל-המים מִנֶהָהָ... For the latter, see Genazim catalogue number 4966/11.

16 Charles G. Leland and John D. Prince, translated metrically, *Kuloskap the Master And Other Algonkin Poems* (New York: Funk and Wagnalls Co., 1902); and Charles G. Leland, *The Algonquin Legends of New England* (Boston: Houghton, Mifflin and Co., 1885).

17 Leland and Prince, *Kuloskap*, 11.

18 Leland and Prince, *Kuloskap*, 12.

19 Leland and Prince, *Kuloskap*, 16.

quent effort to select homophones . . . , and sometimes alliteration. Iteration is also called in aid, and the metrical scheme is varied in the different chants."[20]

Given all that, however, some doubt remains about whether Lisitzky was sufficiently informed of the poetic nature of the original tales, and whether he considered preserving the effect for his readers. His preference, obviously, was to emulate his predecessor, the great American poet, to present himself as an analogue among Hebrew literary figures, steadfastly holding on to well-established, and perhaps even out-of-fashion poetic standards – in terms of meter, (mostly) unrhymed lines, elevated and allusive diction, and familiar Jewish themes – on the one hand, while introducing an exotic, "primitive" and unfamiliar culture on the other.

As in Longfellow's work, Lisitzky's representation of the world of the American Indian blurs the boundaries between a mimetic, concrete reality and the realm of myth. From the opening episode of *Medurot do'akhot*, the world in which the chief characters act cuts through that which separates the mythic sphere from reality, with the principal characters remaining undisturbed in the least by this fact, indicating the relative unimportance of realism in his work.

For example, the characters in the poem are never surprised when encountering mythic beings, as illustrated in the case of the opening tale, "The Star Maiden" (בתולת הכוכבים). The hero, Nanpiwati, who abducts the heroine, Nemissah, the mythical Star Maiden,[21] is unperturbed by her supernatural abode, ability to fly or curious flying vehicle. Instead, he is struck by her beauty and, true to modern Western fashion, falls in love with her. Additional examples of the mix between myth and reality abound in the composition, among which are the journey of the hero to the Land of the Spirits (chapter 8); references to a "vision quest," a three day fast by the hero to bring on a vision of the future of his people when the Whites arrive;[22] and etiological

20 Daniel G. Brinton, *The Lenape and their Legends* (New York: AMS Press, 1969) 159–60. For more on the Walam Olum (or Wallum-Olum), see Lewis Spence, *The Myths of the North American Indians* (New York: Dingwall-Rock Limited, 1927?) 77–78. For a more general work, see George W. Cronyn, ed., *American Indian Poetry: An Anthology of Songs and Chants* (New York: Liveright, 1962).

21 *Medurot*, 13–20.

22 On vision quests – also performed by Hiawatha, in chapter v of "The Song of Hiawatha" – see Henry Rowe Schoolcraft, *Schoolcraft's Indian Legends*, ed. Mentor L. Williams (East Lansing, Michigan: Michigan State Univ. Press, 1956) 36, 47, 49; the same texts is also preserved in the reprint of the 1839 edition: Henry Rowe Schoolcraft, *Algic Researches: Indian Tales and Legends*, new introduction by W. K. McNeil (2 vols.; Baltimore: Clearfield Company, 1992); and Charles M. Skinner, *Myths and Legends of Our Own Land* (2 vols., 4th ed.; Philadelphia: J. B. Lippincott Co., 1896) 2:158; compare these to Lisitzky, *Medurot . . .* , 97–98. For an alternate account of this practice see Lame Deer, "The Vision Quest," in Richard Erdoes, ed., *The Sound of Flutes and other Indian Legends* (New York: Pantheon Books, 1976) 63–67; or Richard Erdoes and Alfonso Ortiz, eds., *American Indian Myths and Legends* (New York: Pantheon Books, 1984)

stories of the medicine man, among many others.[23]

Moreover, as in the case with Longfellow's story, the force of the mythic sphere fades as the plot reaches its denouement. The intersection of myth and reality, which is intact prior to the arrival of the Whites, dissolves following the Europeans' appearance. Just as the metaphysical realms diminish along with the efficacy of all magic, so the Indians lose the strength to stand up to the conquering Europeans. A new reality, White civilization, invades, disrupts and supplants the old, unveiling a world of new truths. Realizing the technological superiority of the Europeans, then, it is no surprise that Tzvetan Todorov's observations, in his *The Conquest of America*, find support in this account. Native Americans' authentic perception of their reality is replaced by an alien, and alienating, actuality bearing inscrutable rules. Neither does this new state of things capitulate to their expectations, but is determined by the European Whites. The natives become helpless and passive victims of a superior dictum from others and, regardless of any forms of resistance, finally succumb.

Lisitzky's interest in Indian tales does not begin with this long poem, or publication of a few of its parts. Anticipating this epic work, his earliest known interest in Indians is recorded in several poems published in his 1928 anthology, *Shirim* (*Poems*).[24] Among them are two incorporating Native-American

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69–72. However, the practice of calling forth a dream, or an explanation of one, is a familiar theme among observant, especially Hasidic, Jews. The practice, termed "She'elat ḥalom," is illustrated in S.Y. Agnon's "'Agunot," *ʾElu ve ʾelu* (Tel Aviv and Jerusalem: Schocken, 1966) 415; English version in Alan Mintz and Anne Golomb Hoffman, eds., *A Book that Was Lost and Other Stories* (New York: Schocken, 1995) 46.

23 For variant tales of the origins of the Medicine Man see Spence, *North American Indians*, 230–32, 249–51, 354; James Mooney, *James Mooney's History, Myth, and Sacred Formulas of the Cherokees*, new introduction by George Ellison (Ashville, N.C.: Historical Images/Bright Mountain Books, 1992) 25–52; William T. Corlett, *The Medicine-Man of the American Indian and His Cultural Background* (Baltimore: Charles C. Thomas, 1935); "The Grizzley Bear's Medicine" in George Bird Grinnell, *The Punishment of the Stingy and Other Indian Stories* (New York: Harper and Brothers Publishers, 1901) 87–113, esp. 107–9; and "How Medicine Began," in Hitakonanu'laxk (Tree Bear), ed. *The Grandfathers Speak: Native American Folk Tales of the Lenape People* (New York: Interlink Books, 1994) 60–62.

24 שירים (ניו יורק: חברים; תל אביב: דביר, 1928); these, too, may have been preceded by published poetry in periodicals. Lisitzky's early treatment of Indian tales was more as a mirror of his lyrical, poetic inclinations, as the poet considers his own condition by recollecting those ancient tales. A case in point is the immediate discussion on his "Maiden of the Falls." However, he also published a direct translation of an Algonquin creation story which, unlike the former comment does not address any aspect of the poet himself. This translation, soon after publication of "Maiden of the Falls," indicates how the effect of an unmediated presentation of the exotic world is attained, and may have been a step in the poet's developing strategy of presenting that world as if from within, which led to the next logical step, constructing a fictitious scaffolding upon which to suspend many authentic tales. And see, אפרים ליסיצקי, „אגדת הבריאה אשר לאלגונקוינים (מן המיתולוגיה ההודית)," הדואר י, שנה ט, גל' י (ג' טבת תר"ץ; 3 במרץ 1930) 163.

themes and characters. The first, בתולת האשדות,[25] tells a story of a maiden who emerges each night from the waters of Niagara only to see that the world of the past is gone. What she witnesses is her world altered by bridges, city and a tamed river producing electricity for strangers. The second, and immediately following poem is על חוף ניאגרה.[26] As in the case of the first, this poem also illustrates Lisitzky's reliance on Native American stories to tell of the vanishing Indians in a romantic mode. The poem notes the light playing on the river's waters, resembling Indian picture-writings, a remaining token – ציורי כתב-ההדים, שריד-מזכרת – of a glorious world which is no more. Along with the fading smoke of the peace-pipe, the poet laments the Indians who also disappeared. Alluding to a known Indian tale, the poem also mentions the ritual of "The night of the waterfall offering," during which an Indian maiden was sacrificed by her people to bring a blessing to the land.

Lisitzky's composition confronts the Hebrew reader with an exotic reality, much as Longfellow's had done for his readers, of an unmediated world, bereft of Jewish protagonists. The values and cultural features are purportedly those of Native Americans even to the point of omitting any moral judgment about dubious practices which may be represented. Moreover, the poet refrains from drawing any analogy between the account and the Jewish experience, which compels the Hebrew reader to meet, face-to-face, the Other, its culture, worldview and notions of existence. However, the very exoticism, and in a work composed in a heightened Hebrew style, invariably brings the Hebrew reader to seek analogies with the Jewish condition, regardless of the poem's observable intent, although pursuit of this significance remains in the realm of interpretation only.

Lisitzky, as other American-Hebrew writers of the twentieth century, offered his reader a Hebraic (and Jewish) reimagining of the cultures of marginalized peoples on the American landscape. As Longfellow's heirs, their works may also be compared to this canonical archetype and from which not all were able to fully separate themselves. One glaring similarity was that they all dwelled on, or concluded their works with, the demise of Native American society, tribe or family. Unlike his fellow Hebrew poets, however, it is only Lisitzky who adhered as closely, and was as explicit about his allegiance to Longfellow. At least externally, his stated goal has been to emulate Longfellow, using the same poetical foot and technique of gathering and combining myths from differing sources without crediting them.

In a letter to the Hebrew poet and editor Yitzḥak Lamdan, Lisitzky described

25 Maiden of the Falls, שירים, 90–91. In Indian lore, the sacrificed maiden is deemed the Bride of Manitou, and see Skinner, *Myths and Legends*, 2:61–62; the account is retold as "The Sacri fice at Niagara Falls," in Margot Edmonds and Ella E. Clark, eds., *Voices of the Winds: Native American Legends* (New York: Facts on File, 1989) 336–37.

26 On Niagara's shore, שירים, 92–98.

his introduction to *Medurot do'akhot* as a prose poem, one which later inspired a similar opening for his *Be'Oholey Khush*. As if pursuing the thought formulated in that letter,[27] Lisitzky injects into his introduction the metaphor of birth and creation of his composition, which he terms "a fabric of poetry."[28] As for the purpose behind creating this fabric, it was, he asserts, "to rescue and bring into our Hebrew poetry an echo of the sounds of Indian songs who fell silent. . . ."[29] Concluding his introduction, he adds that,

> With the decline of the Indians, their song, soft-sounding and of delicate majesty, also declined. And if I succeeded in drawing up from the depths of their dimming horizon an echo, be it even flimsy, of this fading song – that would suffice.[30]

Out of a desire to preserve in American Hebrew poetry a rudiment of the original, "an echo of the sounds of Indian songs who fell silent," Lisitzky introduces his readers to his version of the Other. Significantly, and perhaps also ironically, at the very time of writing this work Lisitzky was also cognizant of the danger of demise confronting Hebrew poetry and culture in America. In the manner that Indian songs were falling into oblivion, so too was Lisitzky's work forgotten.

With the Jewish national cause being a salient issue for Lisitzky and his era, it is surprising that he did not revive Indian poetry for any personal, Zionist cause. The poems are never touted as a mirror of the Jews' experience in America. While likely, as will be shown, the process of striking the analogy, of bridging between Indian tale and the Jews' experience, was left totally to the reader's imagination and interpretation. Years later, though, before the publishing date of *Be'Oholey Khush*, his anthology of poetry inspired by the experiences of America's Blacks, Lisitzky intertwined the three cultures by observing:

> One people was destroyed and eradicated from America's soil, its land from generation to generation – the Indian people. A second people was down-trodden, oppressed and debased – the Black people; and a third people is struggling to save a vestige of its being and character within this brand new existence – the Jewish people.[31]

27 Ephraim Lisitzky to Yitzḥak Lamdan, 5 June 1951, Genazim, catalogue number 17841/1.
28 *Medurot*, 3.
29 *Medurot*, 3.
30 *Medurot*, 4.
31 אלה תולדות אדם (ירושלים: מוסד ביאליק, 1950) 287.

If not earlier, by the time of composing these words Lisitzky saw the value in the nexus between the Jewish experience and that of others in the New World. It is not unlikely, also, that he understood the didactic function of his work, as did Silkiner and Efros before him, in admonishing American Jewry of the possible fate awaiting them were they to ignore their culture.

Demonstrating the extent to which Lisitzky relied on authentic Indian folktales is but one path in the evaluation of his compositional strategies for *Medurot doʿakhot*. An identification of the sources he used can illuminate the extent of the poet's reliance on familiar tales, also indicating the measure of its "Americanization." This approach can also exhibit the poet's reliance on external sources and delineate an effective point of departure for original creativity within the tales, as in fusing them into a single whole. Namely, the measure of how Americanized this work is may be gauged by the degree of its literal adherence to original Indian tales (themselves an adaptation and English translation of the folklorist's record as taken from original Native American oral accounts). In the following, this pursuit will include an examination of what Lisitzky translated as against that which he did not as a demonstration that Lisitzky did not fully adhere to the original but instead adapted it to reflect his vision and tastes.

Being third among his fellow poets to publish a long poem on Native Americans, Lisitzky, as his predecessors, strove to distinguish his art from the rest. Nonetheless, his work shares a number of significant features with them. Of those similarities, the principal one is that all three writers' compositions lack direct and overt expression relating their work to the Jewish world. The works themselves – including Lisitzky's compilation *Be'Oholey Khush*, and Eisig Silberschlag's "MiPi Kushim" (From the mouth of Blacks)[32] – do not indicate any expressed regard for the poets' own ethnic and religious origins, problematics and culture. That these works were composed in Hebrew appears coincidental. To be sure, while the poems may illuminate issues pertaining specifically to the Hebrew reader's experience in the New World, these are never stated explicitly. The expectations of the reader, as well as the very mind-set of the poets themselves, make this nexus very likely. This analogical relationship is demonstrated in Lisitzky's words, cited above, as in other examples of his tendency to associate the Indian experience with that of Jews, as he does in his farewell speech to his students and community, discussed below, wherein he strikes an analogy between the message in an Indian myth of raising the sky and the Jewish experience in America.[33]

32 In his anthology עלה, עולם, בשיר (*ʿAleh, ʿolam, beshir*; Rise, O World, in Song) (New York: Ogen, 1946) 107–22.

33 Composed in poetic form in his כמו היום רד (*Kemo hayom rad: shirim*; As the Day Set) (Tel Aviv: Maḥbarot LeSifrut, 1960) 300–304; retold in prose form in his בשבילי חיים וספרות (*Bisheviley ḥayyim vesifrut; In the Paths of Life and Literature*) (Tel Aviv: Maḥbarot LeSifrut, 1961) 190–91.

Another common denominator among these works, with the exception of Silberschlag's – which is instructive in itself about this poet's representation of reality – is the somber and pessimistic air which pervades the plot of each story. A fatalism governs the protagonists' struggle to avert the physical and cultural destruction of Black and Indian existence by European civilization and might.

Finally, each of the poets – except for Silberschlag, who composed much shorter, at times lyrical and plotless individual poems – opens his work with a description of a seemingly idyllic life of protagonists and tribes preceding their encounter with Whites. Yet, in each instance, the strife among the very tribes anticipates the continued division among them and, with the arrival of the White Man, confirms their eventual downfall.[34] The seemingly utopian existence of Native Americans concludes catastrophically as they encounter Europeans and struggle against a seemingly inevitable fate.

Lisitzky's composition of *Medurot do'akhot* did not arise without prior signs of interest in the subject of the Native Americans. Nor did he restrict himself to poetry. As in the case with *Be'Oholey Khush*, he made use of journals and earlier published anthologies to reflect on this theme which, as he knew, served to distinguish a small number of Hebrew poets from the larger milieu of those who wrote in Hebrew or Yiddish.

In a review essay of Israel Efros's *Wigwamim shotkim* (*Silent Wigwams*, 1932), dated a year before the publication of his own *Medurot do'akhot*,[35] Lisitzky explores his fellow poet's long poem in ways that are more than a critique. The essay offers up more insight into Lisitzky's poetics than about the Efros composition. It is, indeed, an expression of Lisitzky's poetics regarding the proper modes of representing the world of the First Nations.

Thematically, concedes Lisitzky in his essay, telling of the Indian experience presents Hebrew readers with the tragedy of the Native American as an object lesson with which Jews can identify.[36] As such, Lisitzky recognizes Efros's dwelling on the subject of the importance of land possession for the survival of a national group. The episode in question in *Wigwamim shotkim*, notes Lisitzky, is the Hebrew poet's indirect message to readers of their own existential condition. Efros represents Native Americans as dismissing the significance of land, a detail which readers have noticed as more of a message to Jews than actual historic fact of Indians' regard for territory. The prevailing contemporary view among Zionists was that the Jews are actively affecting their future by acquiring and working land in *'Eretz Yisra'el*. The method – posited by

34 So noted by Menachem Ribalow, כתבים ומגילות (*Ketavim umegilot; Writings and Scrolls*) (New York: Ogen, 1942) 183–89, esp. 187–88.

35 ליסיצקי, בשבילי חיים וספרות, 60–72.

36 ליסיצקי, בשבילי חיים, 70.

Lisitzky and other readers – of discerning by analogy the Jewish "message" in works about Indians and Blacks seems to be a fair and valid approach in comprehending Lisitzky's *Medurot do'akhot* as well. In terms of strategies of interpretation, then, particular Jewish issues may be sought out in the representation by Hebrew writers (and not just Lisitzky) of subjects which otherwise appear to have no direct bearing on Jewish issues.

Among his other objections to Efros's poem is the choice of genre, which Lisitzky identifies as a realistic epic.[37] In keeping with this genre, the plot and all its components are directly and unambiguously presented for the reader. Related to the drawback of Efros's work, notes Lisitzky, is an overly prosaic language, accompanied by plot elements which lack a strong causal bond.[38] Lisitzky's preference is that epic works include components which are allusive and, we may add, metarealistic. Such factors lend non-realistic epics a mystery and aura which prompt variant readings issuing out of their multi-layeredness. Lisitzky's opting for Silkiner's and Longfellow's works, over that of Efros's, stems from their reliance on mythic elements which they incorporate into their stories. Mythic components need not be as closely and realistically determined as in the case of the realistic epic presented by Efros.[39]

In order to appreciate *Medurot do'akhot*, I present a brief summary of its plot. Those familiar with the tale may skip the following four paragraphs. The poem tells of the relationship among two neighboring Indian tribes, the Children of the Serpent (בני-השפיפון) and the Children of the Vulture (בני-הפרס). It begins with the marriage of the Indian chief's son, Nanpiwati, of the Children of the Serpent, with Nemissah, the Star-Maiden, who gives birth to their daughter, Genetaskah. Genetaskah, when she grows up, frees Midaingah, son of Hutoton, chief of the Children of the Vulture, their rival tribe, from her father's prison. As punishment, Nanpiwati condemns his daughter to death by drowning. Tension between the two tribes increases because of a drought, fishing rights, instigations by Yahahadzah, the Medicine Man of the Children of the Vulture, and Midaingah's vision of the coming of the Whites.

Midaingah, who has fallen in love with the dead Genetaskah, seeks her in the Land of the Spirits. Finding her, he thinks of remaining there instead of returning to his world, where, unbeknownst to him, his father's death by the White Men's guns has made him the heir apparent. At the same time, Yahahadzah, the Medicine Man, attempts to elevate his own son, Hanuhagi, to head the tribe. Hanuhagi's plan includes organizing a group of warriors, after the model of the notorious Clan of the Little Dog, to resist the Whites. His first step is to put to the stake Osnat, a White woman captured by the tribe. Returning in

37 ליסיצקי, בשבילי חיים, 60.
38 ליסיצקי, בשבילי חיים, 62.
39 ליסיצקי, בשבילי חיים, 62.

the nick of time from his journey to the Land of the Spirits, Midaingah rescues her and advises a diplomatic approach to address the incursion of the Whites, such as by unifying all Indian tribes. He gives the White woman, Osnat, to Nanpiwati, chief of the Children of the Serpent, to replace his dead daughter, Genetaskah. As he does so, he introduces a Lisitzky-esque twist by declaring that Nanpiwati's wife, Nemissah (the Star-Maiden), too, was not a redface, but became a red-heart. Though he finds in her some resemblance to his dead Genetaskah, Midaingah longs for his departed wife and remains disconsolate.

The Indians are divided between those advocating a unified resistance to the Whites, and those, like Midaingah, who advocate making peace so as to learn from them. His pessimism grows when he fails to unify the Indians and hears of the prophesy of doom from a seer. His fears become more acute when Hanuhagi seeks to kill him, and the Whites offer to relocate the tribes farther west. The Indians' independence ends as resistance to relocation results in the suicides of Nanpiwati and Yahahadzah. Though the Indians are victorious in the first battle against the Whites, Midaingah, who comes to them with a peace offer, is imprisoned instead, and his people are driven Westward. When Osnat liberates him, instead of leaving his lands to join his dislocated people, and seeing that the Whites will ultimately conquer all, Midaingah dies by rowing his canoe over a water fall.

The tale ends as an image of another canoe, bearing Genetaskah, heads in Midaingah's direction to greet him, as does the Great Spirit, Gitche Manito, at the entrance to the Spirit World.

Although Lisitzky strove to combine various Indian tales and cultural practices into his two fictionalized tribes, he could not completely obliterate the individual identities of some tribal ways over others. His use, for example, of the name Gitche Manito (Manitou or Manitu) for the name of the Great Spirit, is indicative of his reliance on woodlands Indians' terminology. The Plains Indians used the name Wakan in reference to the Great Spirit.[40] Moreover, at least some of Lisitzky's protagonists bear names borrowed from heroes of specific groups. The idea of unifying the Indian tribes to resist a greater enemy (or promote peace and harmony), though not necessarily derived from any source, points back to one of the accomplishments of Hiawatha, founder of the Five Nations League.

Most characteristic of all associations of his work with those of Native American culture, however, is that Lisitzky's tale is embedded with numerous Indian folktales, some told by his protagonists as object lessons, or narrated by the poet's voice to explain certain phenomena. Together, they lend an air of authenticity to the whole composition. Lisitzky's use and treatment of the orig-

40 Daniel Leeming and Jake Page, *The Mythology of Native North America* (Norman, Oklahoma: The Univ. of Oklahoma Press, 1998) 16.

inal tales, many of which may be identified, is also instructive about the poet and his world-view, as will be illustrated below.

To demonstrate Lisitzky's treatment of extant Native American tales, a number of comparisons between the poet's rendition and the identifiable original accounts follows, beginning with the opening episode of *Medurot do'akhot*. This account derives from the original Shawnee tale "The Celestial Sisters."[41] It is an account of origins, telling how the protagonist of Lisitzky's tale, Nanpiwati, meets with Nemissah, the Star-Maiden, whom he eventually takes for his wife. Both the original and the Hebrew accounts tell of the marriage between the mortal hero and a celestial heroine. The story presents the greater-than-life origins of the protagonist, remotely resembling the biblical tales of Genesis 6:4 about the Nephilim and of the sons of the God(s) who take wives from among mortals. However, Lisitzky does not capitalize on the possibilities inherent in this plot line. In other instances, though, he does resort to tales of origins – The Flood, etiological stories such as the origins of the Medicine Man and the craft of weaving – on several occasions when telling of the mythic past of Indian people.

In his opening episode, Lisitzky retains a fidelity to the authentic tale, even describing the forest path leading to a clearing in the woods. It is there that twelve celestial maidens descend in a flying basket. Departing from the Indian story, Lisitzky's account dwells more on the beauty of the maidens than one finds in the original:

> It assumed the form of a basket, and was filled with twelve sisters of the most lovely form and enchanting beauty. As soon as the basket touched the ground, they leaped out, and began to dance around the magic ring, striking, as they did so, a shining ball as we strike a drum. Waupee gazed upon their graceful forms and motions from his place of concealment. He admired them all, but was most pleased with the youngest. Unable longer to restrain his admiration, he rushed out and endeavored to seize her. But the sisters, with the quickness of birds, the moment they descried the form of a man, leaped back into the basket and were drawn up into the sky.[42]

41 Henry Rowe Schoolcraft, *Indian Legends*, 31–33. For a discussion of variants and revisions of the account, see there, p. 33, n. 1. The folktale is similar to the Shawnee tale, "The Star Family or Celestial Sisters," in Henry R. Schoolcraft, *The Myth of Hiawatha and other Oral Legends* (Philadelphia: J. B. Lippincott and Co., 1856) 116–20. In the same source, the author presents the original Indian song out of which the prose tale is told, and see Schoolcraft, *The Myth of Hiawatha*, 335–39. Another variant is the "Chippeways" [sic] story "The Star Maiden," in Spence, *North American Indians*, 152–56, bearing an attractive color illustration, p. 154.

42 Schoolcraft, *Indian Legends*, 31; similar in his *Algic Researches*, 68.

The Hebrew version extends the description of the maidens' beauty beyond that of the Indian tale. As opposed to the general statement of their appearance in the Indian story, Lisitzky dwells on detail, assuming a poetic stance and making use of simile to compare them with familiar objects:

אָז תִּקְפֹּצְנָה חִישׁ מִתּוֹכוֹ,	Then out jump of it so quickly,
קַלּוֹת רֶגֶל כְּצִפֳּרִים.	Light footed as are the birds.
נַעֲרוֹת חֵן, שְׁתֵּים עֶשְׂרֵה, מָשְׁלָן	Fair young maidens, twelve, as they
אֵין לְיֹפִי בִּבְנוֹת שִׁבְטוֹ:	Were none so beautiful among his people:
עֵין עוֹר פְּנֵיהֶן כְּעֵין לִבְנַת	Their faces' hugh as of the whiteness
חֲבַצֶּלֶת טְלוּלַת בֹּקֶר	Of the lilly bedewed in morn
וּשְׁנִי וֶרֶד צְרוּב צָהֳרָיִם,	And the crimson of the noon-time rose.
זִיו עֵינֵיהֶן כְּזִיו תְּכֵלֶת	Their blue eyes, as the color of
שְׁמֵי-הַשַּׁחַר הַנֶּחֱשָׂפִים	Skies at sunrise as they are emerge
מִתּוֹךְ מַאֲפֵל לֵיל נָמוֹג,	From the darkness of a fading night.
וּכְחוּם יְקַר עוֹר שׁוּעָל,	And as the brown of precious fox skin,
חוּם חַכְלִילִי זַךְ וְנָהִיר,	A ruddy brown pure and clear,
עֵין שְׂעָרָן אֲשֶׁר גָּלַשׁ	Was their hair as it cascaded upon
עַל תְּכֵלֶת גְּלִימוֹתֵיהֶן	The blueness of their robes,
שְׁקוּפוֹת כִּטְוִי שְׂמָמִית עָטְפוּ	That were transparent as a spider's weave, which
גְּוִיּוֹתֵיהֶן הָעֲנֻגּוֹת. (עמ' 214ב)	Enfolded their delicate bodies.

In rendering a fitting translation of the original, I have attempted to retain its rhythm and euphuistic flavor, one which succeeds in transmitting a mood and style resembling an ancient text.

Further on, Lisitzky alters the account in slight as well as more significant ways. In the case of the former, he alters an ostensibly puzzling description of the maidens striking a ball as if it were a drum. To avoid this seemingly unnecessary analogy of the original tale, he turns the ball into a drum. More significantly, the original tale dwells on Waupee's hunting skills as he selects his target from among the twelve maidens. Having done so, he rushes out of his hiding place to capture her. By contrast, Lisitzky's hero, Nanpiwati, adopts the familiar *maskilic* (enlightened) pose reminiscent of a protagonist out of the literature

of the Hebrew *haskalah* period. Nanpiwati, who also leaps at the maidens, does not attempt to capture the one who strikes his fancy. Rather than resorting to brute force, he employs the weapon of the word as he strikes the attitude of a rational protagonist to express his feelings:

אָז יְזַנֵּק נַנְפִּיוַטִי	Then Nanpiwati leaped
מִנִּי מַאֲרַב מַחֲבוֹאוֹ,	Out of his hiding place,
כִּי תְקָפָהוּ פֶּתַע פִּתְאֹם	For all of a sudden
כֹּסֶף אַדִּיר לְהִלָּווֹת	He was overwhelmed by a great desire to join
עַל הַמְּחוֹלְלוֹת בִּמְחוֹלָן,	The dancers in their dance.
וּכְזַנְּקוֹ קָרֹא יִקְרָא,	And as he leaped he cried out
פְּרוּעַ קוֹל, טְרוּף רַחֲשֵׁי-פֶּרֶא:	In a wild voice, overcome by savage murmurs:
„תְּנוּנִי נָא, הוֹי, בְּתוּלוֹת פְּלִיאוֹת,	"Let me, oh, wondrous maidens,
טֶרֶם אֶשְׁאֲלָה מִי אַתֶּן	Ere I ask of who you be
וּמֵאַיִן זֶה תָּבֹאנָה,	And whence you come,
לָסֹב אִתְּכֶן בִּמְחוֹלְכֶן	To whirl with you in your dance
כִּי כֹּה יָפֶה הוּא אַף נָעִים –	For it be so nice and pleasant –
לִבִּי לִבִּי לִמְחוֹלְכֶן,	My heart goes out to your dance,
מַרְפֵּא בּוֹ לְרוּחַ כֵּהָה!"	For a dark spirit it be a salve."

(עמ' 15א–ב)

Lisitzky's Nanpiwati is cultured, polite, and psychologically more genuine than Waupee, the hero of the original account. He is initially depressed, for the sight of the young maiden becomes for him "a salve for a dark spirit."[43] The heavenly maidens' dance does not arouse him sexually as much as aesthetically, which explains his wish to join their dance. Any outburst of desire is blocked by a loquacity, even if it be "a wild voice, overcome by savage murmurs," characterizing his substitution of intellect for instinct. Breaking out in a run toward them, Nanpiwati maintains his eloquence, aiming not to seize but to dance, not to fall upon but to persuade them of his honorable intent.

Nanpiwati also declares that their dance will bring succor to his dark spirit – מרפא בו לרוח כהה!. Though generally understood, this phrase is somewhat

43 Schoolcraft, *Indian Legends*, 15.

vague in classical sources, which further illuminate the nuanced expression. In the Tanakh, the sole instance combining the two terms, רוּחַ כֵּהָה "a dark spirit," is in Ezekiel 21:12, וְרָפוּ כָל-יָדַיִם וְכִהֲתָה כָל-רוּחַ ". . . and every heart shall melt, and all hands shall be slack, *and every spirit shall be faint*, and all knees shall drip with water. . . ." This nexus begs the conclusion that it is not the hero's physical strength which has evaporated, but that his spirit is low, and he has lost courage. An attitude of this kind is very much out of character for an Indian hero, though not Lisitzky's, whose upset is reported in detail over several columns of the poem. Also, the physical cause of his spiritual faintness is not depression or sadness, whose raison d'etre is absent in this episode, but the very beauty of the maidens, their dance, and the sound of the beating drums. Combined, these elements constitute the aesthetic force which gives rise to his weakness so much so that he loses the courage to capture his heart's desire.

The maidens in both accounts, the original and Lisitzky's, flee their pursuers. But it is the youngest among them in Lisitzky's account, Nemissah, the one who has yet to master her spirit and curiosity, who is drawn back to Nanpiwati and tarries before her sisters draw her away in their escape from the mortal.[44]

While Nanpiwati remains helplessly agitated, Waupee of the folk account resorts to magical devices to cunningly ensnare the one whom he fancies: he disguises himself first as a possum and later as a mouse. It is this nature of the Indian hero which Lisitzky had to deliberately recast. Nanpiwati, by contrast, is more anguished, his instincts suppressed. The idea of employing deception to seize his beloved does not even cross his mind. Instead, his parents come to his help. They offer their advice, cautioning him against attempting to capture a celestial maiden. Their manner is more in keeping with members of an intellectual and enlightened society in which liberal-minded parents resort to verbal persuasion of their children to make their case than parents in a folktale.

When, in the folktale, Waupee captures the nameless celestial maiden, he takes her for his wife. Nanpiwati, Lisitzky's protagonist, does not do so; he is the complete gentleman. After his second attempt, he, too, succeeds in apprehending the maiden Nemissah,[45] but then resorts to language and logical persuasion to explain his intent to take her for a wife. She, as Lisitzky's cultured and enlightened protagonist, also responds tastefully and logically, accepting his proposal of her own free will:

44 The name Nemissah is taken from the name of the Star-maiden in Spence, *North American Indians*, 156–59, though Lisitzky does not use the story of the Star-maiden as told there. Moreover, Lisitzky uses the name of the hunter of the Star-maiden, Algon, for another purpose, and replaces it with Nanpiwati, and see Spence, *North American Indians*, 152–56. Lisitzky's Algon is a tribal elder who tells the stories of the Sacred Bear Spear (229–31), and of Kwakigala (231–33).

45 *Medurot*, 18–21, esp.18–19.

אַךְ לִרְצוֹנִי לָךְ אֶכָּבֵשׁ,	Only willingly I shall be subdued to you
אִשְׁתְּךָ לִרְצוֹנִי אֱהִי –	I shall be your wife by my will –
אֱחֱזָה בִי, עֶלֶם פֶּלְאִי,	Hold me, wondrous lad,
נַהֲלֵנִי וַהֲבִיאֵנִי	Lead me and bring me
אֶל מוֹלַדְתְּךָ וְעַמְּךָ! (עמ׳ 20א)	To your land and people!

Such manipulations to alter the personal qualities of his protagonists are but a few indications that Lisitzky did not merely translate the Indian stories but adapted them to reflect his culturally determined judgment. For all the critical comments about this composition being an outlet for his passions, Lisitzky mutes the sexual primitive overtones of the folktale, and suppresses his protagonists' primitive impulse and emotion. Instead, he transforms their relationship to an intellectual discussion based on enlightened, democratic rules of sensitivity, respect, equality and free choice.

When, after their marriage, the heroine of the tale longs for her parents' home, Lisitzky, foregrounding his romantic and dramatic powers, gives free reign to his imagination to describe effusively and in detail Nemissah's anguish. Such overpowering language heightens the dramatic situation in Lisitzky's work. When she leaves Nanpiwati to visit her parents, Nemissah wishes to return to him at once. By contrast, the heroine of the folktale prepares at length for her journey, planning to remain with her parents for a protracted period of time. Nemissah, out of her love for him, decides to return to Nanpiwati after only one day's visit, and that despite her parents' entreaty that she remain longer:

„טוֹב״ – יַעֲנֶנָּה אָז אָבִיהָ –	"Very well" – replied her father –
„בְּזֹאת אֵאוֹת לָךְ, וְאוּלָם	"On this I shall agree, but
תְּנִי אֶל לִבֵּךְ: אִם לֹא יֹאבֶה	Do beware: if Nanpiwati
נַנְפִּיוַטִּי לַעֲלוֹת אִתָּךְ	Will not ascend with you
אֶל נְוֵה מְכוֹרָתֵנוּ –	To our native land –
עָלֹה תַעֲלִי בִלְעָדָיו	You come up without him
עִם פְּרִי בִטְנֵךְ אֲשֶׁר תֵּלְדִי	With the fruit of thy womb that you bear
כִּי בְנַפְשׁוֹ הוּא, נֶמִיסַהּ:	For it will be endangered, Nemissah:
אִם לְבֶן-אֲדָמָה תַהַר	For if to a mortal does conceive
בַּת עַם שְׁכוּנֵי הַכּוֹכָבִים –	A maiden of celestial beings –

אִם לֹא תַמְלִיט אֶת פְּרִי בִטְנָהּ,	If she does not rescue the fruit of her womb,
אִם יִשָּׁאֵר עַל אֲדָמָה,	If it remain on earth,
יֵשׁ וְרָבְצָה בוֹ הַמְּאֵרָה,	A curse, per chance will be with it,
בּוֹ וּבְכָל הַנִּלְוִים עָלָיו,	With it and all who join it,
כֵּן דִּבַּרְתִּי, רְאִי, הִזְהַרְתִּיךְ!" (עמ' 225ב–26א)	Thus have I spoken, see, I warn thee!"

More than in the folktale, Lisitzky's account displays a sensitivity to the values of family integrity and love between husband and wife. Nemissah is concerned for the well-being of her husband and child more than about her parents' wishes. Her desire prevails over parental pressure, as her father attempts to block her return to earth by locking her up, instead of persuading her by use of logic of his desire. Though attentive to social norms, Lisitzky places greater import on a woman's feelings and views than the authoritarian patriarchal system of society he portrays, or out of which he comes.

Unlike in the folktale, Lisitzky also embellishes his account with an added literary motif, that of the changing of the seasons. In the folktale, the heroine forgets her husband while visiting her parents in the celestial world. Only after her son's birth does she return to earth, and that in order to bring Waupee back with her to the sky in the form of an eagle. Lisitzky relinquishes the opportunity to convey the plot to the upper sphere, which would blur and threaten the clarity of his message. Instead, Nemissah returns to earth with her father's assent to give birth, her arrival marked by the onset of springtime. As the earth bears its fruits, Nemissah gives birth to her daughter, Genetaskah.[46] Despite the chance, Lisitzky forgoes the temptation to turn the event into a mytho-etiological tale pertaining to the arrival of spring. Not interested in re-creating primitive tales about the cycle of the seasons, the poet drops the subject never to return to it, attending instead to more earthly concerns.

The Indian story, by contrast, does address itself to the celestial sphere, wherein all the mythical creatures are transfigured into familiar animals. Lisitzky, though, remains faithful to an unstated principle governing his worldview: love brings people together, even the celestial woman with her earthbound husband. For, after failing to persuade him to join and return with her to the heavens, and in the face of his acquiescence that she leave him and return to her parents, Nemissah embraces her husband's world by uttering words evocative of the biblical Ruth's dramatic promise to Naomi:

46 *Medurot*, 26; the name is drawn from the name of the Peace Queen in an Oneida of the Iroquois account, and see Spence, *North American Indians*, 262–65.

„לֹא!״ – עָנַתְהוּ בְּקוֹל בּוֹכִים –	"No!"– she responded crying –
„בַּאֲשֶׁר תֵּשֵׁב אֵשְׁבָה אָנִי –	"Whither you settle I shall settle –
בִּלְעָדֶיךָ מַה לִּי, מִי לִי?	Without you what have I, who is for me?
אִתְּךָ אֵשֵׁב עַל אֲדָמוֹת,	With you I shall stay on earth,
אֲחַלֵּק פֹּה עִמְּךָ יַחַד	Together with you to share
גַּם הַטּוֹבוֹת גַּם הָרָעוֹת;	The good and the bad;
בִּלְעָדֶיךָ, נַנְפִּיוַטִי,	Without you, Nanpiwati,
שֶׁבַע תֵּרַע לִי כָּל טוֹבָה,	Sevenfold will every good be bad for me,
יַחַד עִמְּךָ, נַנְפִּיוַטִי,	Together with you, Nanpiwati,
שֶׁבַע תִּיטַב לִי כָּל רָעָה!״	Sevenfold will every bad be good for me!"
(עמ' 27א–ב)	

In contrast with the original folktale, Lisitzky's rendition underscores the significance of words. It is by them that the plot progresses, not by actions. Characters affect others by what they say, foregrounding the value of mutual respect, communication and, above all, logic to affect and persuade. In so doing, Lisitzky modernizes and westernizes the Indian story, as many American and European writers have done with authentic Indian tales. He humanizes the protagonists of the exotic tale, altering them to mirror his own milieu, in the same way as many Western treatments of Indian folklore have been found to do. He also Americanizes and romanticizes the Indian in the European sense, making them products of an enlightened, modern world. The reader, who learns to accept the Other by virtue of this account, is also presented with a sanitized version of a world purportedly unlike his own, although as human as his.

As observed from the above example, and those that follow, Lisitzky relied heavily on Native American folktales extant and available by his day in a number of scientific and popular collections. Though most were in prose form, there is some evidence to support the contention that their originals were also sung or chanted by Native Americans. Whether aware of this or not, Lisitzky gave the tales poetic form, much as he witnessed in Longfellow's model. His choice to open his long poem with the above account, which is not first in the Schoolcraft anthology he obviously used, stems from the modern character of his tale. It needed a beginning closer to reality, so he avoided tales of creation or etiology. Instead, he found an account suitable for the introduction of his characters, so as to present a unified tale, one focused on the drama of individuals struggling against a fate meted out by a cruel turn of events.

It is quite likely that the original volumes out of which Lisitzky read, translated and transposed the tales into Hebrew can be identified, as can the version he selected. This claim may be supported, in part, by the extent to which Lisitzky retained the details of the original accounts, and adhered to the order of the narrated details. Though in some instances, as in the one illustrated above, he took some liberties with the original, as by embellishing it with his own descriptions, the alterations are mere additions which highlight the poet's tendencies but do not change that which he found in the sources. In so doing, Lisitzky set his composition apart from his Hebrew predecessors, Silkiner and Efros, to become in effect Hebrew literature's Longfellow. Yet, neither the prior cultural affinity (Jewish) nor the language (Hebrew) of the text were instrumental and efficacious in making his compilation as seminal as Longfellow's. For at the very time that he was busily composing *Medurot do'akhot*, his readership in America continued to dwindle. America's Jews were becoming Americanized at a rate that deprived Lisitzky's generation of Hebrew writers of a significant audience. To be sure, Lisitzky's work was also suitable as a means of acclimating Jews, or readers of Hebrew, to America and its culture, although few needed his guiding hand to make the transition.

We may derive similar poetic insights from the re-presentation of most, if not all, Native American myths, stories and practices permeating Lisitzky's long poem. His composition incorporates over a dozen specific, and identifiable Native American tales, most of which are presented in full. Moreover, there exist other tales than these, and they appear in partial form, as conveyors of cultural detail, enriching the overall account with added authenticity about Indian practices and mores. The mere adoption of these accounts in Hebrew is in itself remarkable, and a reason for examining the full composition. Of greater value, though, is an understanding of the relevance of this process in the formation of an extended work. While exotic and unlike anything he (and, for that matter, Silkiner and Efros) published before, the thematic relationship of *Medurot do'akhot* to the rest of Lisitzky's *oeuvre* can be instructive.

One of the overriding issues in *Medurot do'akhot* is Lisitzky's penchant for the Other, a matter touched upon in many of his poems. This attraction to the outsider, no doubt, has to do with Lisitzky's personal odyssey from East European orthodox Judaism to become a liberal, all-inclusive worldly individual. Discernible in his poetry and prose is Lisitzky's interest in other faiths and sympathy for minorities, evidenced by his personal visits to Black churches and composition of poetry in the spirit of religious hymns. His inquisitiveness into the early, primitive and primordial roots of America is in keeping with an affinity he harbored for the ancient, untainted and ideal in experience.[47]

47 Preil called Lisitzky the most American of Hebrew poets, presumably in thematic rather than formal term, and see, גבריאל פרייל, „נוסח-אמריקה בשירה העברית,״ מצודה, ספר שביעי (תשי״ד) 498.

Lisitzky reached the apotheosis of these sentiments in his extremely long and difficult allegorical poem, *Naftuley 'elohim* (*Divine Struggles*, 1934). In this ambitious work, presenting a spiritual odyssey in quest of eternal truths, Lisitzky embraced all religions. At the poem's conclusion, he envisaged races and faiths coming-together in a final demonstration of the unity of mankind against the forces of evil.

Though Lisitzky appropriated known Native American tales, he not only acknowledged doing so, but used them to ameliorate the image of the Indian. For example, he molded his translation in such ways as to represent a positive image of the hero as a romantic and "modern" individual. His representation of the Other did not emerge out of a desire to accept the exotic for what it is but in order to impose his vision of human nature on his protagonists. In place of depicting his subjects in a realistic vein, Lisitzky favored the allusive, mythical approach, combined with ingredients which converted them to familiar, unthreatening beings.

More than just a retelling of Indian tales, however, *Medurot do'akhot* illuminates the reciprocal relationship between the Hebrew poet and the exotic, Native American literary and cultural landscape. Through his act of sanitizing and Westernizing the world he sought to bring about an acceptance of the authenticity of the Other, tenuous as this may be. On the other hand, contact with Indian tales – altered as they were – Americanized Hebrew literature as much as did street life on the Lower East Side. It brought to the Hebrew reader's attention an awareness of other minorities struggling to retain a modicum of identity in the crucible that is America. Situating the Other, be s/he Black or Indian, in isolation, without contact with Jews, opened Hebrew literature up to the Other as much as did many of Moshe Smilansky's Arab romances set in *'Eretz Yisra'el* at about the same time.[48]

Hebrew literature's encounters with Indians and Blacks also made these groups more palatable to readers by foregrounding their universal, familiar features. To be sure, cultural elements, which lent an exoticism to these depictions, abound in the writings of Lisitzky as in those by Silkiner, Efros, and others. However, they have all selected those elements which, by and large, made their subjects amicable and acceptable for readers who saw themselves reflected in their experiences.

Examination of other episodes illustrates the extent to which Lisitzky utilized this practice in his composition. The following examples illustrate how Lisitzky manipulated the dramatic dialogue among his protagonists to lend them greater individuality, depth and humanity.

The story of the origins of fire has many variants among Native American

48 On Smilansky, see Gila Ramras Rauch, *The Arab in Israeli Literature* (Bloomington: Indiana Univ. Press, 1989).

peoples, as it does elsewhere. The account which Lisitzky incorporated into his composition demonstrates that American Indians had their own version of the Prometheus story. In addition to this possible motive, the poet may have also preferred the following account over others because of its thematic relevance. Drawn from the narrative of the Menomini Indians, this is a tale[49] of how the hero, Manabush, steals fire from its keeper and places it in the hands of Thunder, or the heavenly Thunderers, who "have had the care of fire ever since."[50]

In his rendition, it is quite apparent that Lisitzky relied on the tale presented in a specific anthology, the one by Judson, even opening with the same words spoken by Manabush:

> While Manabush was still a young man, he said to Nokomis, the Earth, "Grandmother, it is cold here and we have no fire. I shall go and get some."
> Nokomis said, "Oh no! It is too dangerous."
> But Manabush said, "Yes, we must have fire."[51]

Lisitzky, moreover, enhanced this rather simple exchange – highlighted using an alternate typeface in the Hebrew and italic in the translation – developing it into a more elaborate and nuanced discourse than found in the source, one in which the expanded dialogue dramatizes the account, lending added dimension to the protagonists:

„– הָלֹךְ אַלְכָה וְהֵבֵאתִי	"– I shall go and fetch
אֵשׁ הֲלוֹם, אֲשֶׁר בָּהּ נֵחַם –	Some fire hither, by which we shall warm ourselves –
קַר עַד מָוֶת פֹּה שָׁבְתִי!	*It is deathly cold here, Grandmother!*
כִּי חָסַרְנוּ אֵשׁ – וַנְחַסֵּר	*For if we lack fire – we shall deprive*
נַפְשׁוֹתֵינוּ מִכָּל טוֹבָה!	*Our souls of all that's good!*

49 *Medurot*, ch.11, 142–43.

50 Katharine Berry Judson, ed., *Myths and Legends of the Mississippi Valley and the Great Lakes* (Chicago: A.C. McLurg and Co., 1914) 26–27, quote is from p. 27; for alternative versions, see Judson, *Myths and Legends ... Great Lakes*, 31; also Katharine Berry Judson, *Myths and Legends of the Great Plains* (Chicago: A.C. McClurg and Co., 1913) 28–30; Katherine Berry Judson, ed., *Myths of British North America* (Chicago: A.C. McClurg and Co., 1917) 33–34, 42–43; Stith Thompson, ed., *Tales of the North American Indians* (Cambridge: Harvard Univ. Press, 1929) 40–42.

51 Judson, *Great Lakes*, 26.

תְּנִינִי, אֵיפוֹא, וְהֵבֵאתִי	*Leave me, then, and I shall fetch*
אֵשׁ הֲלוֹם לְרַוְחָתֵנוּ –	*Some fire here for our relief –*
תְּנִינִי, שָׂבָהּ! – כָּכָה נִדְבַּר [צ״ל שָׂבָה!״]	*Leave me Grandmother!"*– Thus spoke
אֶחָד יוֹם הַצָּעִיר מַנְבּוּשׁ	One day the young Manabush
אֶל שָׂבָתוֹ, הִיא נוֹקוֹמִיס.	To his grandmother, Nokomis.
–"אָכֵן קַר פֹּה, קַר עַד מָוֶת!"–	*–"Indeed it is cold here, a deathly cold!"–*
תַּעֲנֵנוּ אָז נוֹקוֹמִיס –	Answered Nokomis –
"אוּלָם דַּע לְךָ כִּי רָעָה	*"But know ye that evil*
נִשְׁקְפָה אֵלֶיךָ, מַנְבּוּשׁ,	*Awaits you, Manabush,*
אִם לָאֵשׁ הַגְּנוּזָה תִּצְדֶּה,	If you seek the secret fire,
אִם תְּנַסֶּה לְהַפְלִיטָהּ,	If you strive to deliver it,
כִּי בְנַפְשְׁךָ הַדָּבָר!"	For it is at the risk of your life!"
–„וִיהִי מָה" – אַז גָּמַר אֹמֶר –	–"So be it"– he then concluded saying –
"הָלֹךְ אֵלֵךְ וְהֵבֵאתִי	*"I shall go and fetch*
אֵשׁ הֲלוֹם, כִּי עַל כֵּן בִּלְתָּהּ	*Some fire hither, for without it*
קוֹם לֹא נָקוּם, שָׂבָה טוֹבָה –	*We shall not endure, dear Grandmother –*
מֶה חַיֵּינוּ בִּלְעָדֶיהָ?"	*What's the use of living without it?"*

(עמ׳ 142א–ב)

With the embellished text, the account is not only longer, as the protagonists represent themselves in greater detail and depth, but Lisitzky's embellishments render the account more expressive and passionate. Opening with the direct speech of Manabush, the Hebrew version is narratologically more sophisticated than the folktale, the spoken words engendering an *in medias res* effect, postponing information as to time, place and protagonists for the sake of the dramatic impact of the spoken words.

Lisitzky's rendition of "primitivism" in the poem is also characterized by frequent repetitions, also practiced by Longfellow. However, since the same technique was familiar to Lisitzky from his intimate acquaintance with poetic parallelism of the Tanakh, the technique cannot be attributed solely to Longfellow's model. Manabush's opening words are repeated at the conclusion of the discourse. He also makes frequent reference to Nokomis as "Grandmother," and even "dear Grandmother," lending an affectionate tone to his speech. Repeating

the words "leave me," the hero seeks his grandmother's approval, or at least that she not resist his decision. This aspiration to represent "primitivism," however, falls short of being persuasive; neither the language nor the story's characterization persuasively capture the exotic world of another culture.

Added to the story is Manabush's suggestion that there are other benefits to possessing fire; and although not specified, the implication – in "What's the use of living without it?" – is that along with warmth, fire provides added material and intangible values. Without fire, the protagonists can not overcome the deadly cold and live, nor enjoy the benefits life has to offer.

Both stories, the Indian and Lisitzky's, proceed to tell of Manabush, disguised as a rabbit, stealing the fire and bequeathing it to all people. Coming from Hutoton, chief of the rival tribe, "Children of the Vulture," the story in its context is used as a preliminary address in the peace-pipe ceremony with Nanpiwati, chief of "Children of the Serpent," and Yahahadzah, Medicine Man of the tribe.[52] In place of its original purpose among stories of origins, it becomes a "midrash" to convey a series of messages on the theme of unity. In this case, Hutoton underscores the brotherhood of all Indians as the beneficiaries of the gift of fire.

More than a few of the borrowed stories contained in *Medurot doʿakhot* foreground Lisitzky's penchant for locating universal messages in them. It is very likely, indeed, that a chief criterion for selecting one story over others is the moral it offers, and which may be elicited to fit the message of Lisitzky's account. More than a translation, his use of the stories becomes an act of transformation. Lisitzky's sophisticated literary stratagems modify the original account, augmenting it in subtle or manifest ways. His manipulations give rise to a more enhanced tale, embellished and transformed at its deepest layers.

One example concerns the tale of the Young Dog Band (*Medurot*, 179–89). Told by Hanuhagi, son of Yahahadzah the Medicine Man, the tale supports his desire to form a cadre of elite warriors to confront the threat of the White Men. The reader learns that while in exile from the tribe, Hanuhagi had personally witnessed the Dance of the Young Dog among the fictitious "Ree" tribe. Indeed, the source of Lisitzky's tale was one originating among the Cree Indians, whose identity he slightly altered while retaining its story of the origins of the Society of Young Dogs.[53]

The relationship between the two accounts is uncanny. Lisitzky not only adheres to the details of the original, but he also preserves its peculiar details, such as a curious description of the hero lying unclothed in a pit as he awaits to trap an eagle.[54] Lisitzky even retains the seemingly inconsequential note in the original describing it as a dance "borrowed from the Crees," by the Pawnee

52 *Medurot*, 142–43.

53 Compare Spence, *North American Indians*, 190–93, with Lisitzky's *Medurot*, 179–89.

54 Compare Spence, *North American Indians*, 191, with Lisitzky, *Medurot*, 180b.

Indians.[55] In Lisitzky's account it is his hero, Hanuhagi, who borrows the tale he heard in order to create, within his tribe, a Society of Young Dogs or אגודת כלב צעיר [עמ' 188ב] "Society of the Young Dog."

The tale is of a young brave's encounters, in a dream, with a host of magical animals who, every evening, turn into humans. They bestow upon him attributes of their own identity that will make of him a great warrior. It is in imitation of this event that the Society of Young Dogs is established, incorporating a ritual of the Young Dog Dance to recapture the magical powers granted to the story's hero.[56] Lisitzky retains all the details, even to the order in which the animals address the brave – owl, buffalo bull, porcupine, eagle, whooping crane, deer and bear – as they bestow upon him the same gifts as in the Indian tale.

The significant points of departure include Lisitzky's enhancing of represented discourse. He added more of the protagonists' direct speech, and gave each animal nearly equal space to speak about its traits and gift to the Indian brave. Even in cases where the original account becomes abbreviated, as when the utterances of the buffalo, deer and bear are only reported in the Indian tale by means of indirect speech, Lisitzky's account conveys their direct words, and at a length equal to the others. Another peculiarity in the Hebrew is the mention of Atius Tirawa by the protagonist[57] as the name of the Father-Spirit – explained in a rare footnote by Lisitzky. It is also called "the Great Spirit,"[58] to whom the brave addresses his prayers. Although appearing in the same volume containing the original tale as found in Spence, *Myths of the North American Indians*, the name is not mentioned in the same tale but in the book's Glossary, explained as "Principal deity of the Pawnees."[59]

The borrowed name – not part of this Indian tale – is part of an episode added by the poet to the story. In it, the hero confesses to feeling as a ne'er-do-well seeking redemption from his fate.[60] In place of the brief report about the

55 Spence, *North American Indians*, 190.

56 Thus, Dog Soldiers are "older warriors of high standing," according to Natalie Curtis (Burlin), *The Indians' Book* (New York: Harper and Brothers Publishing, 1923) 31. Compare also to the account concerning the White Dog Feast in William M. Beauchamp, ed., *Iroquois Folklore: Gathered from Six Nations of New York*, Empire State Historical Publications, no. 31 (Port Washington, N.Y.: Ira J. Friedman, Inc., 1965) 182–89, as an Iroquois (Onondaga) ceremony. A similar ritual, among Dakota (Sioux) Indians, is described in Curtis, *Indians' Book*, 58–59. Finally, a reference to the practice of sacrificing a white dog as part of the New Year ceremonies, though said to be relatively modern, is in Lisitzky, *Medurot*, 82 ff., and noted by Beauchamp, *Iroquois Folklore*, 39.

57 *Medurot*, 182a.

58 *Medurot*, 308.

59 Spence, *North American Indians*, 377, 122.

60 *Medurot*, 181–82.

brave, stating that "All that day he sat by the water bemoaning his ill-luck and praying for better fortune," Lisitzky offers an expanded description exceeding a whole column.

It is by manipulating discourse that the account becomes more dramatic, and emotionally nuanced. The same technique underscores our conclusion that the tendency to sharpen the psychological dimension of the protagonists is one of the trade marks in Lisitzky's adaptation of Indian stories.[61]

Flood stories abound in many cultures, including those of the New World. Lisitzky's chosen Indian tale tells of a flood which people attempt to out-run by heading to the Coteau des Prairies, the Mountain of the Prairies, Minnesota.[62] The flood waters, however, continue to rise, drowning even those who have reached that haven. In recognition of their act, Gitche Manito, the good supreme being, turns them into a red stone of which peace pipes are fashioned to this day.[63]

A comparison of the folk account with Lisitzky's Hebrew version rendering is revealing. Temporarily cut in half, the first part of the original is told by the principal protagonist, Nanpiwati, who recounts it during the peace pow wow with Hutoton, chief of "Children of the Vulture," the rival neighboring tribe. Nanpiwati tells the tale to complement Hutoton's story of the aforementioned origins of fire among the Indians. In the original Indian flood tale, one woman survives the rising waters. Saved by War Eagle, probably an incarnation of Gitche Manito, she marries him to become the mother of all Indian peoples.[64] The message that all of them are of a common ancestry is delayed in

61 Another version of the story is "The Grizzley Bear's Medicine" in Grinell, *The Punishment*, 87–113, esp. 107–9.

62 Chap. 11, 143–44.

63 The poet has drawn his tale from a tale of the Knisteneaux Indians recorded in Katharine B. Judson, *Great Lakes*, 94. The very presence in this collection of the two tales, of the origins of fire and the flood story, in accounts whose details parallel closely those presented by Lisitzky, is strong evidence that the poet had this anthology in hand while working on his poem. For variants on the flood account as here presented, see there, 90–91, 93; in addition, see also Skinner, "Pipestone," in *Myths and Legends*, 2:162–64; Judson, *Great Plains*, 26–27; Albert B. Reagan, *Some Flood Myths of the Indians*, vol. 2 of *The Sun God – Moccasin Tales* (Provo, Utah: Albert B. Reagan, 1936); on the prevalence of the use of pipestone from one specific site, "Red Pipe-stone Rock," located in Minnesota, see Spence, *North American Indians*, 116–18. It is from this location that the peace pipes of many tribes have been fashioned, a sacred location to which many adults have made pilgrimage. The peace pipe is made in imitation of the pipe originally fashioned by Gitche Manito, according to an Ojibwa tale, as per Judson, *Great Lakes*, 90–91. In "The Song of Hiawatha," the redness of the rock is attributed to the blood of the buffalo hunted there by Gitche Manito. This pipestone bears the scientific term Catlinite, named after the discoverer of the location, George Catlin.

64 Judson, *Great Lakes*, 94; also see Curtis, *Indians' Book*, 4–7; for a Mojave-Apache version of the story, see Curtis, *Indians' Book*, 330–31.

Lisitzky's rendition, to be expressed in the second half of the retelling, and by a secondary character, and not by Nanpiwati. In his presentation, Nanpiwati uses the tale to underscore the physical unity of the Indians by observing the symbolic act of sharing a peace pipe, one comprised of the ancestors' bodies, as a sign of identity among the participants:

„בְּרִית כָּרַתְנוּ בַּמִּקְטֶרֶת:	'We struck a covenant with the pipe:
כִּי כִדְבוֹק גְּוִיּוֹת אָבוֹת,	For as our ancestors' bodies cleaved,
אֶחָד דֶּבֶק לֹא יִתְפָּרֵד,	By one inseparable union,
קֶרֶב אֶבֶן מַחֲצַבְתָּהּ,	Within the rock of which they were hewn,
כָּכָה יִדְבְּקוּ עַד עוֹלָם	So will cleave together
לִבּוֹת בְּנֵיהֶם „בְּנֵי-הַשְּׁפִיפוֹן"	Hearts of "Children of the Serpent"
„וּבְנֵי-הַפֶּרֶס" יַחַד,	With "Children of the Vulture,"
וּכְשָׁאֳפָם פֶּה אֶחָד	And as they inhale together
אֶת נִיחוֹחַ מוֹר עֲשָׁנָה [צ"ל עֲשָׁנָהּ]	The sweet scent of its smoke
כָּכָה יִשְׁאֲפוּ לֵב אֶחָד	So will they together aspire
נֹעַם שָׁלוֹם עַד הָעוֹלָם;	For peace's delight forevermore.'
(עמ' 144א-ב)	

Lisitzky's interruption of the original folktale – in which the significance of the common mother demonstrates the unity of all Indians – is accomplished by inserting this "midrashic" explanation for the act of smoking the peace pipe. The Indian tale, as noted, makes no mention of this interpretation for the ritual. Though both the original and Lisitzky's addition underscore the solidarity among Native American tribes, the poet's insertion interrogates the tale in a new way, reading the physical characteristics of the pipe as symbolic – the stone comprised of the fused bodies of the ancient dead, its redness denoting their blood and bodies – in place of relying on the memory of a common mother to all.

Lisitzky's narrative resumes as Nanpiwati glories in the idea of peace and brotherhood among neighboring tribes, saying, אוּלָם יָפְתָה שִׁבְעָתַיִם / שֶׁבֶת שְׁבָטִים שְׁכֵנִים יַחַד "But sevenfold more splendid [than blue skies or grassy earth] / is the dwelling together of neighboring tribes" (144b), echoing the familiar words of Psalm 133:1, and enhanced by a rich alliterative consonance.

It is left to Yahahadzah, the Medicine Man, to bring back the deleted segment of the folktale. He concludes the original tale and explains its moral as

in keeping with the source.[65] As a man of the cloth and memory, it is he who tells of the common ancestry of all tribes by the union of the surviving woman and War Eagle. His observations underscore the mythic or historical function of the peace ceremony. Significantly, he shares Nanpiwati's message, even employing the latter's formula, but in a negative vein: echoing Nanpiwati's formula of the sevenfold benefit of peace, Yahahadzah's propensity for contrariness is illustrated by his words: נוֹרָאָה שֶׁבַע הַמִּלְחָמָה / כִּי תְקַצֶּה בְעֶבְרָתָהּ / כַּמְנַצְּחִים כַּמְּנֻצָּחִים "Sevenfold worse is war / for in its wrath it destroy / the victor as the vanquished" (145b).[66] While Nanpiwati dwells on the beauties of nature and makes peace sevenfold more desirable, Yahahadzah focuses on the calamities wrought by the northern wind and finds the horrors of war among Indians as sevenfold more pernicious. So while the message he brings reiterates Nanpiwati's, it is subtly different, anticipating his continued treachery as one of Nanpiwati's adversaries. Seeming to complement and complete Nanpiwati's message, Yahahadzah's words allude to his attempted overthrow of Nanpiwati's rule. This sinister quality is anticipated by the negative mindset his words convey, as one in whose imagination war and conflict are at the root of his metaphor.

The episode continues by mimicking the structure of the greater composition. In the same manner as the larger story opens with a mythic plot and concludes on one much more real, this exchange among the participants in the peace talks also opens with accounts out of both tribes' mythology and, when all have had their say, continues as Nanpiwati reports on the arrival of White Men and the danger they pose.[67]

One of the most dramatic tales found among many Indian traditions is the hero's pursuit of his beloved to the Land of the Spirits, referred to in a number of places above. Of all, Lisitzky singled out the Chippewa version of the Orphic tale,[68] which reads like the ultimate expression of love between the protagonists. Recognizing its romantic potential, Lisitzky incorporated it into his composition. It is the tale of love transcending death, an apt story for a poet whose life story of loss and pain was accompanied by a penchant for emo-

65 *Medurot*, 144–45.

66 *Medurot*, 145. For a similar stylistic formula compare Nemissah's oath of faithfulness to Nanpiwati, discussed above, *Medurot*, 127.

67 *Medurot*, 145–52.

68 Compare: "The White Stone Canoe," in Schoolcraft, *Indian Legends*, 246–48, with Lisitzky, *Medurot*, chap. 12, 155–61. Similar accounts include "The Journey to the Island of Souls," in W. W. Gibbings, ed., *Folklore and Legends, North American Indians* (London: W. W. Gibbings, 1890; repr.; Felinfach, Wales: Llanerch Publishers, 1993) 129–33; a similar Algonquin tale is in Spence, *North American Indians*, 162–65. Also see Schoolcraft, *The Myth of Hiawatha*, 223–27; a variant to this tale is "The Man Who Went to Spirit-Island," in George A. Dorsey, *The Pawnee Mythology* (Lincoln, Nebraska: Univ. of Nebraska Press, 1997) 411–13.

tional literary expression. In this instance, Lisitzky's hero, Midaingah – son of Hutoton, chief of the Children of the Vulture – seeks his beloved Genetaskah – daughter of Nanpiwati, chief of the Children of the Serpent – in the Land of the Spirits. The account follows many of the same details as in the folktale. Unlike the Indian original, though, where the hero seems to know of the Land of the Spirits and the way to get there, Midaingah learns of it from the story of Yahahadzah, the tribal Medicine Man.[69] This slight change heightens the tale's drama while offering a reliable source of knowledge about the world beyond from one who should know.

Unlike the original, Lisitzky's account is simpler in detail, and focused on more elements that heighten the story's dramatic features. He created dialogues where there were none, extended those which existed, heightening the romantic tension between the lovers as they meet and part company. Arriving at the lake which surrounds the Land of the Spirits, Midaingah boards a white stone canoe and notices Genetaskah in a canoe alongside. His anguished heart calls out to her, lending him greater psychological credence in the account by Lisitzky, who adds a particular Hebraic allusion in depicting the white canoe, described as of the whiteness of sapphire, (עמ׳ 157א) לִבְנַת סַפִּיר. Derived from Exodus 24:10 and Ezek 1:26, the words are part of the theophany account. In the poem, the term assigns a metaphysical aura to the canoe, deemed magical in Indian lore.[70]

While the folk story foregrounds the Land of the Spirits as the chief theme of the tale, Lisitzky emphasizes the hero's great love for Genetaskah, whom he attempts to join prematurely. At their conclusion, both tales preserve the command that the hero return to the Land of the Living to live out his destiny. However, the command to "Go back" of the original account[71] is not motivated as strongly as it is in the case of Midaingah, in his expression of love and desire to remain with his beloved.[72] Unlike the Indian tale, which ends soon after an inner voice lectures the hero of his obligation to fulfill his destiny, Genetaskah

69 *Medurot*, 155.

70 The white stone canoe appears to have its origins in the image of the birch bark canoe of Canadian or upper New York State Indian tales, the color often also representing the color of peace. It is this white canoe into which Hiawatha steps as he begins his last journey and rises to heaven. See Beauchamp, *Iroquois Folklore*, 85–86, 98–99; also Schoolcraft, *The Myth of Hiawatha*, 223–27. The Hebrew term, לִבְנָה, indicates "whiteness" or "clearness." And see Reuben Avinoam (Grossmann), *Compendious Hebrew-English Dictionary*, ed. M. H. Segal (Tel Aviv: Dvir, 1962) 167. The term, combined as לבנת הספיר is also the title of an early (1328) Kabbalistic work, and see Gershom Scholem, *Major Trends in Jewish Mysticism* (New York: Schocken Books, 1941) 386, n. 14. The term is also associated with representations of the celestial throne among mystics, inspired, no doubt, by Exod 24:10.

71 Schoolcraft, *Indian Legends*, 247.

72 *Medurot*, 159b.

tearfully accompanies Midaingah on his return canoe trip to the lake's shore, promising to be faithful and to await his return "day and night."[73] Underscoring the romantic theme, the Hebrew account also attributes the hero's successful journey to the help of Gitche Manito, the Great Spirit, who "does not scorn / a perfect heart and true love."[74] Even divine help is extended to those who love truly, who are pure of heart.

Lisitzky's story is less an account of heroic prowess than a romantic story of unvanquished love. His tale is less concerned with frightening the reader about the horrors impeding the hero's journey, and more with a nuanced characterization attained by extending the discourse among characters. While the original Chippewa hero hears the message of the Master of Life in the breeze, urging him to return to the land of the living,[75] Lisitzky psychologizes the account as his hero hears an inner voice urging him to go on living, a message soon repeated by Genetaskah as she accompanies his canoe back to shore.[76]

The original folktale is not without its psychological "realism," though. At the story's end, the hero seems to awaken from a dream in which he saw and experienced all that has transpired, and did not physically make the journey himself.[77] Lisitzky's hero, however, continues to hear the words of the Great Spirit commanding him to fulfill his destiny before his ultimate return journey to the Land of the Spirits. The account ends with the voice of the heroine repeating her promise of faithfulness to him, that she will wait, day and night, until he joins her.[78]

Another example that illustrates Lisitzky's reliance on Native American folktales is the story of the creation of the Red Man. The Indian myth of creation is preserved in numerous sources, Seneca, Mohawk, and Onondaga, among others. The one most strikingly similar to Lisitzky's is the Iroquois tale.[79]

The account presents the creation of two worlds, the Upper and Lower. Earth forms as a soil-covered turtle gradually grows large in the waters it inhabits. Two sons are born of the Original Mother, a good son and a bad one. Following her death, the good son fashions the sun, moon and stars from her remains. When the two fight, the victorious good son remains on earth while his brother descends to rule the netherworld. These details are retained almost completely by Lisitzky, in some cases down to the minutest detail.[80]

73 *Medurot*, 161a.

74 *Medurot*, 159a.

75 Schoolcraft, *Indian Legends*, 247.

76 *Medurot*, 160–61.

77 Schoolcraft, *Indian Legends*, 248.

78 *Medurot*, 162.

79 Recounted in the eighth chapter of *Medurot*, 92–96. Compare with Beauchamp, *Iroquois Folklore*, 7. Variants include: Judson, *Great Lakes*, 8–11, 16, and Spence, *North American Indians*, 105–9ff.

80 A few of the numerous examples of alternate versions are, Thompson, *Tales of the North Amer-*

A related account concerns Glooskap, the Algonquin deity who, with his brother Malsum, are the equivalents of the aforementioned creators of good and hardship in the world.[81] The story, "Glooskap's Gifts,"[82] is retold by Lisitzky using the same details as in the Indian tale.[83] The story is of four men who seek Glooskap's help to cure their troubles – an evil heart, poverty, dishonor, and vanity. All receive a curative ointment but the last, who is impatient to apply it before returning home, does so while still in the woods and becomes a pine tree.[84]

It is very likely that Lisitzky drew on Spence's account. However, that source is a paraphrase, in which dialogues are reported indirectly. Lisitzky's rendition presents the story directly, with each protagonist speaking for himself, enriching the story in detail and drama. Moreover, his narrative also extends the descriptive and discursive segments. However, the affinity between the two is remarkable. The first Indian's desire, to cure his evil heart and feeling that he is enslaved to it, is repeated verbatim in Lisitzky's account.[85] However, Lisitzky's protagonist has greater freedom in speaking and presenting his request than found in Spence's report. He pleads to have his heart of stone turned into flesh, and asks to be granted humility as an instrument against his anger. Moreover, the poor man is more graphic in portraying his condition and making his request. The vain man's desire to seem even taller than he was – by padding his moccasins with fur – is also reproduced exactly in the Hebrew account. Lisitzky, however, expands Glooskap's presentation of the cures and his exhortation to the four about the time and location of opening the salve for curing their troubles. The Hebrew account presents more detail regarding the fourth man, whose impatience turns him into a pine tree.

Moreover, Lisitzky integrates the account to serve as a moral by means of which his hero, Midaingah, cautions Hanuhagi against his rash advice that would escalate acts of violent retaliation against the Whites. Lisitzky identifies the message contained in the original as cautioning against excessive pride, certainty and impatience. He puts the moral in the mouth of his hero Midaingah, who underscores the importance of patience and the need to rule one's impulse so as to avert unwanted consequences. His story is not employed in the way

ican Indians, 24–30; Judson, *British North America*, 9–11; and Judson, *Great Lakes*, 5–7.

81 Spence, *North American Indians*, 141.

82 Spence, *North American Indians*, 144–45.

83 *Medurot*, 200–202.

84 A more prevalent, and different version of the tale is a Micmac Indian story, "Glooscap and the Three Seekers of Gifts," in Alan A. Macfarlan, ed., *Native American Tales and Legends* (New York: Dover Publications, Inc., 2001) 65–68; same in Charles G. Leland, *The Algonquin Legends of New England* (Boston: Houghton Mifflin and Co., 1884) 94–98, 98–103; also Charles G. Leland, and John D. Prince, ed. and trans. metrically, *Kuloscap the Master And Other Algonquin Poems* (New York: Funk and Wagnalls Co., 1902) esp. 64–89, 94–97, 98–106.

85 Compare Spence, *North American Indians*, 144, with *Medurot*, 201.

the original does, as an etiological tale explaining the origins of pine trees, but as one concerning morality.[86]

Other stories drawn from Indian folktales – and whose sources are yet to be identified – also exhibit themes represented in a number of related tales that have been found. This is the case, for example, with the etiological story of the origins of the Medicine Man, and the description of his dance.[87] Another is the story of the origins of the Sacred Bear-Spear. Although the tale is found in an account that does not exactly mirror the one related by Lisitzky, it does contain a number of details which he also uses.[88] Also awaiting identification is the source of the tale of Nadvaknah and the Island of the Oracle, or the Eternal Woman, visited by an Indian for advice.[89] Lastly, two additional tales whose traces remain unidentified are the Northwest Indian story about the Kwakiutl hero Kwakigalah and his sword, and the legend of Insimaki who learns weaving from Spider Woman, a story that contains many ingredients of Navaho stories from the American Southwest.[90]

Nevertheless, it is quite certain that, as he declared in his forward, Lisitzky aimed to preserve Native American tales for his readers. To do so, he remained true to his sources, not inventing new stories, except for the encompassing plot framing those tales in a creative and imaginative way. It is in this process, of composing the frame story, and selecting specific tales over others from his sources, that Lisitzky rises above the tales he uses. Given an opportunity to revise, however, Lisitzky also rewrites the tales in his own image, converting them to a more familiar literary form and giving his protagonists a more familiar face. It is in these arenas that we witness his treatment of the individual tales he used.

The strategy of integrating Native American tales into the fabric of his poetry is not an isolated instance in this composition. It is possible to witness his preoccupation with Native American themes in the years before and after the publication of *Medurot do'akhot*. Such a broad sweep over time in and of itself distinguishes him from Silkiner and Efros, whose writings on the subject were limited to one or two compositions. Moreover, and following publication of his long poem, Lisitzky published a number of short works that underscore his ongoing engagement with the subject. One of these, עִם עֶרֶב (*At Eventide*, 1939),[91] focuses on the demise of Indians. In this case, however, Lisitzky's poetry demonstrate a new emphasis. It departs from the narrow con-

86 *Medurot*, 202–3.
87 *Medurot*, chap. 6, 72b–74b, and 74b–77a.
88 Compare *Medurot*, 229a–31a. with Spence, *North American Indians*, 187–90.
89 *Medurot*, 241 ff.
90 *Medurot*, 231–33, and 309 ff.
91 אפרים א. ליסיצקי, במעלות ובמורדות (תל אביב: דביר, 1954) 30–31.

cerns of his subject and points to a parallel experience of Indians and Jews by the poem's analogical structure. In the first part, the poet tells of Indians appearing in an apparition, dancing around a fire and gathering to hear the words of a wise man. The episode conveys an observation about the extinction of the Indian nation. The poem's second half focuses on the heroes of ancient Israel, underscoring the nexus which its writer strikes between the fates of his two subjects. In conclusion, the poet asks whether the second scene is also doomed to never re-appear, that the Jews, as the Indians before them, are doomed to cease being.

This poem may be the earliest direct analogy struck by the poet between the fate of Native Americans and Jews. Later, Lisitzky explicitly joins the fates of Indians, Blacks, and Jews in his introductory words to his 1953 autobiography, *'Eleh toldot 'adam*,[92] as noted before. Aside from resembling Bialik's long poem, מתי מדבר (*The Dead of the Wilderness*),[93] the poem strikes an analogy between Indians' fate and that of the Jews in America, a theme in the foreground of Lisitzky's consciousness by this time. It is also proof of the poet's long standing awareness of the analogical possibilities inherent in the subject of the exotic as a mirror of the Jews' self. Any earlier connection struck by readers between these groups, then, is a legitimate act which Lisitzky left unstated.

Later, in 1947, Lisitzky published an anthology of long poems in which he included חזון מלילה (*Nightly Vision*),[94] a composite of accounts by several characters (artist, violinist, dancer, poet and philosopher) sharing their life experiences. In the dancer episode,[95] Lisitzky tells of the dancer's love affair with Winona, an Indian maiden from the American West. "In describing her, the dancer becomes artist and musician," states Menachem Ribalow in his introductory words.[96] He also identifies the narrator's voice as similar to that of *Medurot do'akhot*, as it unfolds a tale of personal loss and scorn reminiscent of Lisitzky's experiences. For the artist, the dancer in her death is a metaphor of that primordial force in art which has abandoned him. She is the bearer of characteristics reminding the narrator of Venus, representing the qualities of nature and freedom, a child-like innocence and spiritual purity.[97]

92 אלה תולדות אדם (ירושלים: מוסד ביאליק, 1950) 287. *In the Grip of Cross Currents*, trans. by Moshe Kohn and Jacob Sloan, and revised by the author (New York: Bloch Publishing Co., 1959, 2001) 300.

93 The English translation of this poem, by Maurice Samuel, is in *Complete Poetic Works of Ḥayyim Naḥman Bialik*, I, ed. Israel Efros (New York: The Histadruth Ivrith of America, 1948) 103–19.

94 אדם על אדמות: פואמות. מבוא מאת מנחם ריבולוב (ניו יורק: עוגן על-יד ההסתדרות העברית במאריקה, תש"ז) 223–155.

95 אדם על אדמות, 194–184.

96 אדם על אדמות, xiv.

97 אדם על אדמות, 187–186.

As they join forces to dance together before audiences – the dancer, believing that in so doing he had saved her from a career in cheap saloons – she begins to wither away. Exposed to White civilization, the natural forces in her ebb, very much as the experience of the Indians in *Medurot do'akhot*. Soon she contracts tuberculosis; and though she regains some of her energies upon return to her father's tribal home, it is a temporary reprieve. In fact, her tribe is also wasting away, as they sing "a song of dejection, the cry of a vestige of a tribe / the moan of the last generation, survivor of a mighty people / soon will pass and cease to be from the world."[98]

Upon her death, his ability to perform comes to an end. He has lost his muse and natural force. As well as a tale of vanishing Indian, and the loss of the artist's muse, the poem is an expression of Lisitzky's fundamental pessimism about life. The unhappy ending is characteristic of the poems of this collection.

The poet's preoccupation with the Niagara landscape continues in his poetry even after publishing *Medurot do'akhot* in 1937. In a segment of a 1956 poem, אשדות ניאגרה (*Niagara Falls*), the poet recalls his walks by the falls as a young man – when he served as teacher in a Buffalo, New York, talmudic academy, and was personally undergoing an emotional crisis. The poem expresses the narrator's personal dejection, a mood suspiciously bordering on a suicidal impulse, evoking similar moods in Lisitzky's own past, and recorded in *In the Grip of Cross-Currents*.[99] As the narrator walks along the falls, his imagination transports him back to the days when the region was populated by Indians and primordial forests. His vision includes the Maid of the Mist who beckons him to join her in the abyss and there escape his earthly torments.[100]

Another instance demonstrating Lisitzky's conscious linking of the Jewish experience with that of the Indians is in an etiological story about pushing up the sky. Citing the Indian tale of people who cooperatively push the sky higher in order to make room for human habitation on earth, Lisitzky states that this is also the destiny of the Jewish nation since Sinai.[101]

98 אדם על אדמות, 191.

99 ליסיצקי, אלה תולדות אדם, 281; and *In the Grip of Cross-Currents*, 290.

100 א. א. ליסיצקי, כמו היום רד: שירים (תל אביב: מחברות לספרות, 1960) 204–211, ובפרט 206.

101 The tale originates among the Snohomish Indians and is drawn from a report by Chief William Shelton, "Pushing Up the Sky," in Ella E. Clark, ed., *Indian Legends of the Pacific Northwest* (Berkeley: Univ. of California Press, 1953) 148–49. An earlier source for this tale is in Hermann Haeberlin, "Mythology of Puget Sound," *Journal of American Folk-Lore*, vol. 37, nos. 143–44 (January–June 1924) 371–438, especially "Origin of the Exclamation 'Yahu!'," 417. It seems that Lisitzky used the more accessible version, though the greater brevity of the latter is matched by his account as well, indicating that he also examined the second. The similarity of the first source to the Lisitzky rendition is due to the resemblances between the two accounts, though the Hebrew version omits place names and secondary details. For a more distant variant, where the sky is pushed up magically as the hero rubs tobacco into a fine powder, see the

To tell the tale, Lisitzky uses two available primary sources. His title reflects the one account that focuses on the origins of the term "Yahu!" However, the story also foregrounds the motif of pushing up the sky. Regardless of whether he attempted to meld the two tales, his preference for the first of these is instructive about Lisitzky's revision of the tale's message. As reported, the Indian story is an etiological "why" tale answering the question, "Why do we use the word 'Yahu!' when working in unison?" The second question – Why is the sky so high? – while implicit, is left to reside beneath the narrative surface.

The overriding message Lisitzky finds in the tale is stated explicitly in both renditions, though for different purposes. In the poetic version – חסידים באומות העולם or *The Righteous of the World* – the Indian story is placed in the mouth of an old man who, after telling the narrator the story of Johnny Appleseed, closes with the moral of the Snohomish tale.[102] In that tale, the speaker – doubling as the poet's voice – reinterprets the message to represent the lifting of the human spirit along with that of the skies to meet the Almighty who will bestow upon it of the upper spheres: וְכַאֲשֶׁר תֵּרוֹם אֶל עַל יֵרֵד כְּבוֹד אֱלֹהִים לְעֻמָּתָהּ / וְהִשְׁרָה בָּהּ זִיווֹ יַאֲצִילוֹ מִסְּפִירוֹת שָׁמַיִם עֶלְיוֹנוֹת. (כמו היום רד, 303) (And as it [the call "Yahu!"] rises, God's glory will descend toward it / And shall impart of His radiance that will emanate of the upper heavenly spheres).[103] This gift, continues Lisitzky, is granted only to those selected by God in each generation who raise the sky by means of the love they hold for their Maker and fellow humans, by performing acts of goodness and kindness.

Lisitzky's conscious misreading of the tale promotes his vision of the human spirit confronted by the persistent onslaught of misery, suffering and injustice. Though verging on pessimism, the poet's message is of hope, perseverance and triumph. The Indian tale serves as a vehicle for this message. Read another way, the moral validates the folktale as bearer of universal truths.

In a later pronouncement, delivered on the occasion of his retirement, Lisitzky used the same tale for a more particular, Jewish purpose: it is the Jews who are entrusted with the responsibility of raising the skies, he added. The task is attained not by the universal forces of love and kindness but by the force of spirit, of Torah, faith, tradition and culture.[104] Preceding the retelling of the

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Dieguenos Indian tale, "The Story of Creation," in Edmonds and Clark, eds., *Voices of the Winds*, 145–46, drawn from Constance G. Du Bois, "The Story of Creation," *Journal of American Folk-Lore* 14 (1901) 181. אפרים א. ליסיצקי, „יהא! הרימו השמים (דברי פרידה מתוך פרישה)," הדואר מ, שנה לט, גל' כג (ב' אייר תש"ך; 29 באפריל 1960) 435–436, 441: ליסיצקי, בשבילי חיים וספרות, עמ' 177, 191, ובפרט 190–191: נדפס שנית ב: „חסידים באומות העולם," כמו היום רד: שירים (תל אביב: מחברות לספרות, 1960), 272–304, ובפרט 300–304.

102 ליסיצקי, כמו היום רד, 303–304.

103 ליסיצקי, כמו היום רד, 301–303, ובפרט 300–304.

104 ליסיצקי, בשבילי חיים, 191.

folktale, he notes that "a moral is concealed within it,"[105] which he proceeds to decipher for his audience:

> This was our historical and fateful destiny ever since Sinai: to uplift the sky with poles, not those of wood as the poles of those Indians but of spirit, which we have fashioned for ourselves. And they possess the strength of the Eternal who will not deceive [a reference to 1 Samuel 15:29]. The one who identified this destiny of ours was Rabbi Yisra'el Ba'al Shem Tov, who explicated by it the words in Ethics of the Fathers, "Know that which is above you," know that which is higher than you, that which rises to high spheres because of you, by means of you, by your power it rises. And Rabbi Menaḥem Mendl of Kotzk said it explicitly: man was created to uplift the sky.
>
> And this is my message to you: prepare spiritual poles, those of Torah, faith, tradition and culture, and continue to push the sky with them to lift it up from its baseness. We cannot stand and survive today in a world whose skies have been so debased. "How shall Jacob stand?" [a reference to Amos 7:2,5] – we shall not be renewed [without doing]. Let us be faithful to our fateful and historic destiny – the uplifting of the sky from its baseness.
>
> And with the same Indian call I leave you: "Yahu!" – lift up the sky.[106]

In this version, Lisitzky merely uses an Indian tale for Jewish purposes. The Jews have become the greater-than-life protagonists of a story in which the sky itself takes on added significance. The different purposes to which this tale is put are an indication of Lisitzky's "midrashic" propensity. Selecting from a plethora of Indian folktales, Lisitzky strove to elicit suitable universal, or Jewish messages. The "midrashic" process, so familiar to Lisitzky from his traditional upbringing, provided a creative rereading of those tales to elicit latent meanings which bore the poet's message.

Given Lisitzky's penchant for glossing over the more "authentic" mythical and etiological relevance of Indian tales, his re-presentation of them in a sanitized or literarily enhanced fashion compromised their authenticity. Having identified the sources of a significant portion of these tales, we are challenged to seek out his strategies by interrogating those very texts. One result of this process underscores Lisitzky's locating latent ethical, contemporary messages in the tales. This generalization suggests two disparate conclusions, one underscoring the weakness of his project and the other its strength.

105 ליסיצקי, בשבילי חיים, 190.

106 ליסיצקי, בשבילי חיים, 191.

On the one hand, we may accuse Lisitzky of practicing a form of cultural imperialism, exploiting selected Indian tales to foist upon them Western values, ethical precepts, morals or messages which are otherwise seldom, if ever, enunciated. That is, in place of recognizing Indians as Others, accepting their ways, views and values as different, the poet forces upon the tales alien didactic messages which they do not possess. In so doing, Lisitzky exploits the folktales as vehicles for his Western, or Americanized, world view while ignoring, and perhaps discarding, the Otherness which they bore. Put another way, Lisitzky has Westernized the tales, their ostensible functions and characters in the course of Americanizing himself, wrapping them, as it were, in the Stars and Stripes.

On the other hand, an affirming conclusion would contend that, from the outset, the Indian tales are more sophisticated than their superficial denotations indicate. One would argue that they are, of course, complex literary pieces, signifying on multiple levels any number of edifying messages. Thus, the universal ethical import so favored by Lisitzky, which resides therein implicitly, and is so readily discerned beneath the surface, buttresses the claim for the sophistication of the tales. The original stories, being as didactic as they are, highlight, first and foremost, the particularistic tribal and cultural features that distinguish them and their tellers from the generic, abstractly universal message which they also embrace. Yet these very accounts also bear universal human truths familiar to members of any culture.

Put another way, Lisitzky's strategy of integrating into his story a large number of Native American folktales lends an authentic dimension to his work. In the process, the folktales have been altered in some measure or another. These changes, whether grossly evident, as in Lisitzky's versification system, or more subtle, as by his use of dramatic and narratological techniques, define the literary rendering of the folktales to meet the poet's taste and vision. The process cannot be said to be a complete distortion of the original, whose imprints remain patently evident. Lisitzky's announced intent was to follow the example set by Longfellow, and do for Hebrew literature what the latter did in English. Moreover, though, Lisitzky exploited the folk accounts for goals beyond their most evident messages, though not necessarily those which lay beneath their surface. He strove to portray the universal in human nature, to promote enlightenment and good sense among nations. He revealed the humanity of all his protagonists by also including minority groups at the margins of American society, lending his talents to promote a culture of plurality and diversity among all.

In considering a qualitative shift in Lisitzky's regard for, and treatment of Indian folk tales, at times before and following *Medurot*, we can propose that it is in such instances that the reader is tempted to perceive the implicit inclusion of the state of American Jewry in the picture. This seems not to be the

poet's only or chief goal, however, for he does not mention Jewry even once in the work, preferring to promote the universal brotherhood of all mankind, a sentiment validated by his other works as well, and in particular his *Naftuley 'Elohim* (*Divine Struggles*, 1934).[107]

An earnest engagement with the representation of Native Americans' encounters with White society in the New World placed Lisitzky in a select group of Hebrew writers, each engaged with the subject for his particular goals. For unlike the case of representing Blacks or Black society, Jews' encounters with Indians in their daily lives were limited. Silkiner, Efros and Lisitzky, to name the primary Hebrew writers who have included Indians in their works, went out of their way to explore the exotic and polar opposite of Jewish society. In so doing, they met themselves. The literature about these groups was certainly meant, as Lisitzky himself asserted, as an object lesson and a cautionary word about the fate of the Other in American life. The tightrope between becoming hyphenated or assimilated represented a challenge for all minorities. General public sentiment for outsider groups, whether by hatred, tolerance or even admiration was important for Jews. As a group among others, Jews' sense of security and awareness of place in the host society has always been dependent on the latter's extent of tolerance or acceptance. American culture was at once tempting and alluring for Jews, who also witnessed its propensity to assimilate competing or different cultures. Meanwhile, these culture clashes have been at the core of forces promoting self-preservation or assimilation.

In presenting the lives and experiences of others, Lisitzky also added a new dimension to Hebrew literature, expanding it beyond its narrow, parochial confines. It is this process which, more than anything else, Americanized Hebrew belles lettres and those who contributed to this process, giving rise to the Bellows, Malamuds, Ozics, Potoks and Roths of later years. In other arts, too, the same interest has yielded fruitful results in the works of such as George Gershwin, Mel Brooks and Leonard Bernstein, to name but a few. It is through this kind of engagement with non-Jewish lives, experiences, values and images that Hebrew literature in America distinguished itself from other Hebrew literary centers in the world. It is also through such interests that Hebrew fiction

107 נפתולי אלהים (ניו יורק: עוגן; תל אביב: דביר, 1934). A fifty-six page, undated, English abstract of this work is located at the American Jewish Archives. Possibly prepared as a proposal for publishing a translation of this unusual work in English, this carbon copy of a lost typed original is entitled "Synopsis of *Divine Struggles* – A Poetic Drama." From its appearance, it seems to have been home-made, though no evidence exists from the text itself as to the identity of the one who prepared this synopsis, when, or whether it was ever considered by a publisher. See, "Synopsis of *Divine Struggles* – A Poetic Drama," Lisitzky Collection MSS, American Jewish Archives, Cincinnati.

paved the way for Jewish society's ongoing interest in Black, Hispanic and Indian experiences – be it in conjunction with those of Jews or in isolation from those concerns – in American Jewish literature and arts.

In memory of my teacher, Prof. Milton Arfa; and for Dr. Henry A. Fischel – still mighty at ninety, שליט"א.

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שעד שלהי תקופת הגאונים לא היה לשידוכין אופי משפטי מחייב. מוסד השידוכין, שהושפע כפי הנראה מהשינוי שחל במועדיהם של טקסי הקידושין והנישואין, התחזק בין השאר באמצעות הטלת קנס על מי שיבטל את השידוך. קביעת הקנס נתקלה בבעייה משפטית-הלכתית: ,אסמכתא לא קניא; וחכמי ישראל הציעו פתרונות מספר. נוסחת השטר הנדונה קשורה לאחר הפתרונות הללו.

אני מודה לפרופ׳ מ״ע פרידמן מאוניברסיטת תל-אביב ולפרופ׳ ד׳ שפרבר מאוניברסיטת בר-אילן, שהואילו בטובם לקרוא את המאמר והעירו לי הערות טובות ומועילות. להם התודה ועליי האחריות.

דין לעניין ניקוי האסמכתא מה פשרה של הנוסחה: ,הובררנו וכו׳ בין פ׳ ובין פ׳? שתי תשובות בדבר: א. גם לבית דין שמתמנה לצורך סילוק האסמכתא נועד תפקיד של עיון ובדיקה. בית הדין הנדרש לעניין ביטול האסמכתא חייב שיהיה בקי בדיניה, כדברי הרא״ש, בשם המהר״ם מרוטנבורג: ,מה נקרא אסמכתא ומה אינו נקרא אסמכתא, כמו שמחלקין בין היכא דגזים בין היכא דלא גזים, וכן היכא שבידו לעשות מה שקיים עליו, או אין בידו לעשות;[100] מכאן שגם על בית דין שתכלית קיומו נועדה להסיר את נגע האסמכתא מוטל תפקיד של עיון ובדיקה. אין אפוא לתמוה על נוסחת הפתיחה בשטרי השידוכין שקובעת שהשלושה הובררו להיות בית דין בין פלוני ופלוני. ב. אפשר שתכלית יצירת הבוררות היא אכן לסילוק האסמכתא, כמתואר לעיל, אך לאחר שנתמנו יכולים הם להמשיך ולשמש בתפקיד של פיקוח וליבון העניינים שבין הצדדים.

לאור זאת אני מציע לערוך הבחנה בין ה,ברורים׳ בשטרי השידוכין הקדומים הללו ובין ,ברורים׳ בשטרי שידוכין מאוחרים. עילת כינון הבוררים בשטרות המאוחרים היא שונה, לדעתי. בשטר משאלוניקי מהמאה הט״ז נאמר ששני הצדדים ,בררו ולקחו להם ביניהם לדיינים ופשרנים לחכמים פלוני ופלוני, ונתנו להם כח יפה ויכולת מספיקה ורשות שלמה לדון ולגזור ולפסוק ולפשר בכל עניני הזווג המבורך הנזכר ובכל הדברים הנמשכים והנגררים ממנו, וכמה יתן ר׳ פלוני לנדונייאת בתו הנזכרת;[101] כאן מטרת הבוררות ברורה ותכליתה להטיל על הבוררים את תפקיד קביעת התנאים העתידיים והפיקוח עליהם. השוואת הנוסחה הרחבה הנזכרת לביטוי הקצר והאגבי בשטר מ,צדה לדרך׳ שתוכנו: ,ואם לא יהא גלוי ומפורסם לפי דעתנו אנחנו ג׳ המבוררים; מלמדת, לדעתי, שלא זאת הייתה תכלית יצירת הרכב בית הדין של הבוררים. כלומר, תכלית יצירתם לא הייתה לשם פיקוח עתידי על כל תנאי השידוך והעניינים הנמשכים ממנו, אלא לשם מתן תוקף להתחייבויות ההדדיות, תוך עיון ובדיקת זיקתן לנגע האסמכתא. גם השוואת השטר מ,צדה לדרך׳ לשטרי השידוכין מאנגליה, שבהם לא הוטל כל תפקיד נוסף על הבוררים מוליכה לאותה מסקנה, ומלמדת שתכלית יצירת בית הדין היא להסיר את נגע האסמכתא.[102] זאת ועוד, בשטר השידוכין המאוחר נאמרה במפורש נוסחת הבוררות הנדרשת: ,וכל מה שיעשו ויפסקו ויבררו ויפשרו הדיינים הפשרנים הנזכרים יהיה רצוי ומקובל בין הכתות הנזכרות כאלו נתן מהר סיני בלי שום חלוק; העדרותה בשטר הקדום יכולה אף היא לתמוך בהבדלים המהותיים שהוצגו.

סיכום

במאמר זה עמדנו על נוסחה פתיחה ייחודית ומעניינת בשטר השידוכין. הצענו לקשור אותה להתפתחויות שחלו במעמד השידוכין. הצורך בעריכת שידוכין נזכר כבר בתלמוד אך מסתבר

100 שו״ת הרא״ש, כלל עב, סימן ד, עמ׳ שה. אגב, גם בשטרי גביית הכתובה, שהבוררות שבהם נתקנה בהתאם לדרישת הגמרא, לשם קבלת השבועה, מופיעה לעתים הנוסחה: ,הובררנו להיות בית דין בין... ובין...; דייוויס, שטרות, 137.

101 תקון סופרים לר״ש יפה, שטר יא, הובא אצל גולאק, אוצר השטרות, 9, וראו: גולאק, שם, 1–3.

102 למיטב ידיעתי לא מצאנו עד למאה הט״ז ולשטר הייחודי הנזכר משאלוניקי, דרישה שעדי השטר יקבלו תוקף של בית דין כדי שתהיה להם סמכות לפקח על ביצוע תנאי השטר. כאמור לעיל, כך הוא גם בעניינים סבוכים ומורכבים שבהם נדרשת הבחנה מדויקת ושיקול דעת מֻרבי. ראו: גולאק, אוצר השטרות, 268 ואילך.

לקנסני בכך וכך דינרין׳;[91] ,ואי מעכבנא אקניתי ליה מהשתא ד׳ אמות קרקע בחצרי...׳;[92] כך גם בשטר מחילה מקהילת אליסאנה, מוחלת האישה לבעלה על הקנס.[93] גם בשטר השידוכין בקובץ שלפנינו: ,ולקיים התנאי׳ המבוארי׳ למעלה שמו משכונות ותשומת יד עד כך וכך ליטרי׳ לפרוע זה לזה אותו מהם אשר יסוג אחור מן התנאי׳ ולא ירצה לקימם׳.

כאמור למעלה, במקביל להתפתחות שחלה בהחלשתו של ,בית-דין חשוב׳ יצאו הוראות הלכתיות שונות שנועדו להקל את הדרישות בשידוכין, באופן שההתחייבויות ההדדיות תהיינה תקפות. כך למשל אומר ר״י לעניין שידוכין: ,דלפי שמתבייש ביותר מי שחוזר בו לא חשוב אסמכתא כלל דלאו גוזמא הוא׳.[94] מדובר בקביעה הלכתית שהקנס בביטול השידוכין שהוסכם על דעת שני הצדדים משמש לדעתם כתשלום עבור ה,בושת׳; כאשר צד אחד מבטל את השידוך באופן חד-צדדי, הרי הדבר מהווה בושה לצד השני, שהציבור חושד שמדובר בפגם משפחה. וכך כותב גם הרא״ש: ,וכל קנס של שידוכין לא הוי אסמכתא, דאין כאן גוזמא ויתרון, אלא דמי בשתו הוא נותן לו׳.[95] וכך נקבע גם מאוחר יותר להלכה.[96] אלא שבדרך כלל נימוק זה בא בדיעבד כדי להטיל חיוב על הצד המפר, שלא יוכל להמלט מהתחייבותו בשל טענת האסמכתא. כפי שכתב מהרי״ל בתשובתו: ,ואפי׳ בשידוכין גופייהו, מתיישבים הרבה לעשות מעשה להוציא ממון וזמנין טובא עושין דרך בקשה׳;[97] כלומר למרות שהקנס הוא משום בושת, אין מוציאין ממון באמצעותו אלא מתפשרים ומבקשים מהצד הפוגע לפצות את הצד הנפגע. לכן בוודאי אין ההוראה הזו מייתרת את הדרישות הבסיסיות לסילוק האסמכתא.

הקלה נוספת בדיני האסמכתא בשידוכין נשמעת על יסוד ההתחייבות ההדדית שבין הצדדים.[98] אך רוב המשיבים אינם סומכים למעשה על סברה זו.

נראה שגם הצעתו של המהר״ם מרוטנבורג לראות בנוסחת השטר האומרת ,וקנו מהם בבית דין חשוב׳ כהודאת הצדדים שאין כאן אסמכתא והיא מכשירה את העיסקאות שביניהם, שימשה כהוראת אד-הוק כדי לפתור בעיה שכבר התעוררה בדיעבד. לאור ההגבלות שהביא המהר״ם עצמו בתשובתו, נראה שעדיף שלא לסמוך עליה לכתחילה. היא איננה מייתרת אפוא את נוכחותם של שלושה בוררים שנתמנו לבית דין לצורך עניין זה.[99]

קושי אחד נותר בדרכה של ההצעה המוצעת בזה. אם אכן הבוררות מונתה לשמש כבית

91 ספר השטרות, הברצלוני, שטר עב, עמ׳ 127–129. על ההקפדה בנוסחאות השטר ראו: ריבלין, אליסאנה, J. Rivlin, 'The Formularies in Jewish Documents — Ethics and Law,' *Jewish Law Association Studies*, 7 (1994) 211–220; 20–17; על קניין אגב ארבע אמות ראו: ריבלין, אליסאנה, 36–38.

92 עיטור, שם, תנאי כתובה, א, דף מא ע״ב–ע״ג.

93 אני משער שמדובר בקנס שהוטל על ביטול שידוכין, אף שבמקרה שלפנינו מדובר בגירושין, ראו: ריבלין, אליסאנה, 233–235.

94 נדרים כז ע״ב, תוס׳ ד״ה והלכתא. וראו: בבא מציעא סו ע״א, תוס׳ ד״ה ומניומי. כאן מבקשים בעלי התוספות לחזק את תוקף הקנס שבשידוכין משום שהפך למנהג, וכדין ה,סיטומתא׳ שהוא מנהג הסוחרים, אך דומה שאין שאר המשיבים והפוסקים נוקטים זאת להלכה, וכדלהלן.

95 שו״ת הרא״ש (ירושלים: מכון ירושלים, תשנ״ד), כלל לד, סימן ד, עמ׳ קנג. וראו: שו״ת מהרי״ל החדשות, שם.

96 רמ״א, אבן העזר, נ, ו. וראו: שאלות ותשובות מתנות באדם, מהדורת י׳ בוקסנבוים (תל-אביב: אוניברסיטת תל-אביב, תשמ״ג) תשובות מקוצרות, סימן קטו, 453.

97 שו״ת מהרי״ל החדשות, עמ׳ שא.

98 הגהות מיימוניות, מכירה, יא, אות ח.

99 שו״ת מהר״ם מרוטנבורג, דפוס פראג, סימן תתקעו, שם. וראו שו״ת מהר״ם מינץ, עמ׳ מו.

,הוברנו והתברכנו בעשרה׳ וכן עובדת פרסומה, מעידים לכאורה על מהות של שמחה ולא של עצב ומרות. הצעה אחרת קושרת זאת לסוגיה שנידונה בתקופת הגאונים. בשאלה שנשלחה לרב נטרונאי גאון נאמר: ,אלמנה שנתחייבה שבועה ליורשים משביעין אותה... וצבור יושבין כדי לביישה או בפני ב״ד ובמעמד עשרה זקנים סגי לה׳?[86] השואלים חשבו שמא דיי בעשרה זקנים שייצגו את כל הקהל. אפשר שהם בססו את שאלתם על מנהג כלשהו. תשובת הגאון הייתה שלנוכחות הקהל הרב יש מטרה של הרתעה ולכן אין דיי בנציגות של עשרה זקנים. אפשר היה לומר שכשם שחל כרסום במהלך השנים במעמדו של ,בית-דין חשוב׳ כך חל כרסום בעניין זה. בתחילה דיי היה בעשרה זקנים ובהמשך הספיקה ברכתם. אלא שכרסום כזה בענייננו אינו עולה בקנה אחד עם מטרת ההרתעה, שבדברי הגאון.

זאת ועוד, כפי שציינתי למעלה מצויה תוספת זו של ,ונתברכנו בעשרה׳ בכל שטרי השידוכין ורק בשטר אחד בלבד מחמשת השטרות האחרים. קרוב אפוא בעיני שהיא התייחדה לשידוכין בלבד.[87] לפיכך יש להפנות את נתיב ההשערות לכיוון זה. אפשר שברכת העשרה ואישורם נועדו אכן לתת תוקף יתר להתחייבויות וזאת במסגרת המגמה להכביד על ביטולם של השידוכין. ואפשר להציע דרך דומה, ברוח הדברים שנזכרו למעלה. על דברי ר״ת בדבר השידוכין שנעשו ברוב עם נאמר בתוספות: ,ואין נראה לר״י שהרי כמה פעמים אין שם אלא קרובים׳[88] אפשר אפוא שאם המבוררים קיבלו את ברכתם של מניין אנשים ראו בזאת השלמה למעמד מכובד ורציני של טקס השידוכין.[89]

זו לדעתי, משמעות הנוסחה הייחודית של ,הוברנו והתברכנו בעשרה׳ שמצויה כאמור, בכל שטרי השידוכין הנזכרים. חיזוק להשערתי תשמש העובדה שברוב השטרות בקובץ האנגלי חתומים שני עדים בלבד, ואילו על שטרי השידוכין חתומים שלושה עדים. רק בעיון מדוקדק במקור של ספר ,צדה לדרך׳ גיליתי שגם בו הודגש עניין מספר העדים: ,אנחנו ג׳ המבוררים׳[90]

התפתחויות נוספות בעניין הקנס

נוסחת הקנס משולבת בשטרי השידוכין בכל ספרי השטרות המתוקנים. ,ואם חס ושלום הייתי מעכב אותו... מעכשיו הקניתי לו לפלוני זה ארבע אמות קרקע בחצרי... ויהא רשאי

86 תשובות הגאונים, שערי צדק, שם, שער ד, חלק ד, סימן עב. אשתור משער שהמספר עשרה בעניין זה הושפע מנוהל מוסלמי. ראו: א׳ אשתור, ,קוים לדמותה של הקהילה היהודית במצרים בימי הבינים׳ ציון, ל (תשכ״ה) 130. השערה הקושרת את מניין העשרה לברכת החתנים (כתובות ז ע״א) ולנאמר אצל בועז (רות ד, ב), ראו: א׳ נחלון, קהל ותקנות קהל בתורתם של הגאונים (ירושלים: המכון לחקר המשפט העברי, תשס״א) 40, הע׳ 67.

87 ראו לעיל, הערה 5. המקרה החריג (שם, עמ׳ 5) שבו מופיעה נוסחת ,ונתברכנו׳ בשטר גביית כתובה, הוא כפי הנראה טעות של שגרת הסופר. גם מבנה פתיחת שטר זה שונה מהאחרים. וראו: שו״ת הרשב״א, ג (ירושלים: מכון ירושלים, תשנ״ז) סי׳ נג, דף מג ע״א.

88 נדרים כז ע״ב, תוד״ה והלכתא.

89 והשוו: גולאק, אוצר השטרות, 2. אפשר לכאורה להצביע על הבדל בעניין זה בין גורמי ההתחייבות והמעמד המכובד שהזכרתי כאן ובין מעמד הקהל בשבועת האלמנה (לעיל בסמוך). בדרישה לחוסנה של ההתחייבות או למעמד כבוד השידוכין, דיי בעובדת ידיעת העניין על-ידי מניין אנשים, אך בשבועת האלמנה, שבה נדרש גורם ההרתעה, יש צורך בנוכחות פיזית של הציבור, וכדלעיל. ואולי אפשר לצרף כאן את השערתו של נחלון, תקנות קהל.

90 שם, שורה 16. האות ,ג׳ זעירה וקשה להבחין בה בתצלום. גולאק, כפי הנראה לא הבחין בה.

כלומר, מדובר בשטרי שידוכין הנגועים בדרך כלל באסמכתא, ונקבעה בפתחם הנוסחה הקבועה הנזכרת.

אני משער אפוא שנוסחה זו משקפת מצב ביניים בין תקופתו של רש״י שבה הייתה עדיין הקפדה מלאה על שלושה דיינים מוסמכים לבין תקופתו של המהר״ם מינץ שבה דיי היה בכל שלושה אנשים מבינים.[82] במצב ביניים זה, הקלו מצד אחד בדרישה לדיינים מוסמכים, חברים רשמיים של בית הדין, אך עדיין נותרה דרישה שהשלושה הללו יהיו מבוררים ויוענק להם תוקף של בית דין אד-הוק, בית דין של בוררים שהיה מקובל במקרים רבים. בכך, הוקלה הדרישה מחד-גיסא, אך נשמרה המחויבות של בית דין חשוב, מאידך גיסא, כדי לתת תוקף משפטי מחייב לקנס שלא ינוגע בנגע האסמכתא. כאמור, זו הייתה נוסחת פתיחה קבועה לשטרי שידוכין לפי מסורת אשכנז, היא נועדה להסיר את נגע האסמכתא על-ידי מילוי הדרישה של בית דין חשוב ובצירוף ההקנאה מעכשיו. כפי שראינו למעלה בתשובת רש״י, קיימת בעיית אסמכתא גם אם בפועל עברה ,תשומת היד׳ לידי נאמן, ויצאה מחזקתם של הצדדים, אך יש גם דעות אחרות. איני יודע אם בנקודה זו נתקבלה באשכנז דעתו של רש״י, אך מכל מקום גם אם לאו, יש לזכור שהנוסחה המיוחדת שנתחברה באשכנז אמורה לפתוח את כל שטרי השידוכין, ואפשר שהיא תבוא גם במקרים שבסופו של דבר בפועל הופקדה ,תשומת היד׳ בידי נאמן, או אף אם היא נמסרה כבר לצד שכנגד. כך עולה לכאורה משטר השידוכין שבחיבור ,צדה לדרך׳ שנאמר בו: ,התשומת יד ששמו ביניהם ושמו אותו בידנו׳.[83]

איני יודע להלום בוודאות את משמעות החלק השני של הנוסחה ,ונתברכנו בעשרה׳; אין עדויות מפורשות לכך שכל בית דין של בוררים היה זקוק לאישורו של מניין אנשים. האם אישורם של העשרה בא לתת תוקף לא למינוים של הבוררים אלא לפסיקתם? המהר״ם מרוטנבורג כותב: ,שכל מה שאדם מקבל עליו בפני ראשי הקהל שנבררו מדעת הקהל שאינו יכול לחזר בו׳.[84] איני משוכנע שכך הם פני הדברים. השערה אחרת היא זו שטוענת שמדובר בבוררים שסרבו לדון וה,ברכה׳ האמורה כאן אינה אלא ההחרמה שנהגו ראשי הקהל להטיל על הסרבנים שייאותו לדון.[85] לדעתי, גם דינה של זאת להידחות. הצליל העולה מהנוסחה

82 המגמה להקל בעניין בית הדין החשוב משתלבת במגמה הכללית שקיימת במשפט העברי להקל בדרישות צורניות. כך למשל, הדרישה הצורנית לתנאי כפול הלכה ונתמעטה במשך הדורות. כך גם באסמכתא. יש לזכור שמדובר בהתחייבות לכל דבר. קיימת אי-נוחות מן המחשבה שלא ניתן לאכוף את ההתחייבות הזו על בסיס ההנחה שהמתחייב אמר את דבריו ללא גמירות דעת מספקת. ולכן במהלך השנים ביקשו חכמים למצוא דרכים כדי לעגן משפטית גם את ההתחייבות הזו ולאכוף את קיומה. לדעת רוב המפרשים עניינה המרכזי של האסמכתא הוא גמירות הדעת של המתחייב וסמיכות הדעת של הנהנה. ראו, למשל: תוד״ה כל כה״ג, סנהדרין כד ע״ב; רמב״ן נדרים כז ע״ב ורבים אחרים. זו גם דעת החוקרים, ראו למשל: אלבק, דיני הממונות בתלמוד, 317 ואילך. לליפשיץ (אסמכתא, 41) יש קו שונה, לדעתו: ,וברור מדברים אלה, שאסמכתא אינה קשורה כלל לחסרון בסמיכת הדעת׳ במלוא הכבוד ניתן לומר שאין שיטתו של ליפשיץ נתמכת על ידי המקורות. ומכל מקום בתקופתו של השטר הנדון בוודאי כבר נתפסה האסמכתא כפגם מפגמי הדעת.

83 קיימת אפשרות לפרש את הכל בלשון שומה, דהיינו, הצדדים העריכו ביניהם את גובה הערבון והודיעו לבוררים את ערכו (וראו בהערה קודמת). עם זאת, כאמור, אין כל קושי בענייננו לפרש שהאחרון לשון שימה.

84 שו״ת מהר״ם מרוטנבורג (קרימונה: וויצינצ״ו קונט״י, מהדורת צילום, ירושלים תשכ״ט), סימן רל, דף פג ע״א. וראו בהרחבה: פרנק, קהלות אשכנז, 60–61.

85 פרנק, שם, עמ׳ 101, על-פי מקורות שונים.

היסודות שמנינו נועדו כאמור לחזק את אופיו המשפטי של מוסד השידוכין, עם זאת, יש לזכור שהקפדת יתר על דרישות טקסיות יכולה להשיג תוצאה הפוכה. כך למשל, אם קיימת הקפדה על עשיית מעשה קניין בבית דין חשוב, התוצאה הבלתי נמנעת היא שאם לא נעשה הדבר בפני בית הדין החשוב, לא יהיה תוקף לשידוכין ואפשר לבטלם או להתחמק מתשלום הקנס במקרה של הפרה חד-צדדית. לכן, לאחר גיבושו של השלב הראשון שבו הוקנה לשידוכין, באמצעות הקנס, מעמד משפטי מחייב, החלה להתפתח מגמה של הקלה בדרישות הפורמליות. כך, למשל, כעבור דורות מספר שומעים אנו שאין כלל צורך בדיינים מוסמכים שיהיו נוכחים בעת עשיית מעשה הקניין בשידוכין אלא דיי בהימצאותם של אנשים שיודעים ומבינים בענייני אסמכתא. כך משמע בתשובותיו של מהר״ם מינץ שדיי בשלושה אנשים חשובים.[77]

משמעות הנוסחה: ,הוברנו'

קובץ שטרי אנגליה הוא מהמאה הי״ג. הקובץ ,צדה לדרך' משקף כפי הנראה, את שטרי אשכנז של המאה הי״ד.[78] יש לשער שקיים קשר בין הנוסחאות שבקובץ ,צדה לדרך' והנוסחאות של קובץ השטרות האנגלי, אפשר שהייתה קיימת השפעה ישירה או עקיפה של הקובץ האנגלי על קובץ ,צדה לדרך'.[79] נוסחת הפתיחה בקבצים שלפנינו היא אפוא נוסחה קבועה של שטרי שידוכין בהנחה שבכל מעמד של שידוכין מתבצעת התחייבות שנגועה באסמכתא. כך למשל בשטר השידוכין הנזכר שנערך באנגליה בשנת 1249 נאמר: ,ואם חס ושלום יסרב אחד מהם לקיים התנאים האמורים יהיה המסרב אסור בחרם... וקנינא... בקנין גמור מעכשו לתת... נסכא של כסף שוה חמשה זקוקי' כסף אם ח"ו יהיה מסרב על התנאים האמורים'.[80] ובמקרה אחר שמו שני הצדדים תשומת יד ,נסכא כסף שוה מאה דינ' אשטרלינש' אך הללו נשארו בידיהם, הם לא נמסרו לידי הצד שכנגד ואף לא הופקדו בידי נאמן. כפי שנאמר בהמשך: ,והקנו זה לזה בקנין גמור ובב"ד חשוב... ותתן לו הנסכא הנ' תוך ז' ימים'.[81]

מאגנס, תש״ם) עמ' ט-כג, שם בעמ' יח; הנ"ל, חכמי אשכנז הראשונים (ירושלים: מאגנס, תשמ״ט) 148. אפשר לאמץ את הסברו זה של גרוסמן, ודומה שאין חולק על כך שבאשכנז התייחסו בחומרה רבה לביטול השידוכין. יש רק להעיר שהמקור עליו מסתמך גרוסמן אינו קשור ישירות לענייננו. מדובר בשאלה שנשאל ר' יצחק ב״ר יהודה מגדולי חכמי מגנצה במחצית השניה של המאה הי״א וראש ישיבה בה: ,ומעשה באחד באבלון שקדש ריבה אחת ורצה לחזור וקפץ ונשבע שאם גוזרין עליו לא יקבל. וגזרו עליו בני קהלו והסכימו עמהם בני מגנצא (כצ"ל) וכנסה לחופה. ואף רבנו ר' יצחק ב״ר יהודה הסכים על ידם, והוא הזקיקו לכך'; שם, עמ' יט; הנ"ל, ,יחס חכמי אשכנז הראשונים לקהל', שנתון המשפט העברי, ב (תשל״ה) 175–199, שם בעמ' 188. לדיון בתשובה ובמקבילותיה, ראו: ח' סולובייצ'יק, שו"ת כמקור היסטורי (ירושלים: מרכז זלמן שזר, תשנ״א) 107–109; 120–124. מכל מקום, מדובר באדם שכבר קידש אישה ולא רצה לכונסה לחופה. אין מדובר אפוא בביטול שידוכין אלא בניתוק זיקת האישות. עם זאת, כאמור, עקרונית בוודאי זו היא המגמה המסתמנת באשכנז למנוע ביטול שידוכין.

77 שו"ת מהר"ם מינץ, שם. בתשובתו המפורטת הוא דן בשיטתם של בעלי התוספות ר"י ור"ת שדורשים גם הקנאה מעכשיו וגם בית דין חשוב, וכפי הנראה מצטרף אליה. זו אפוא כאמור, שיטת חכמי אשכנז. המהר"ם מינץ פעל במאה הט"ו.

78 ראו לעיל, סעיף א.

79 למיטב ידיעתי לא נמצאה נוסחת פתיחה דומה במאגרים אחרים. על הקשר ההלכתי שהיה בין חכמי אנגליה ובין חכמי צוריך, ראו: י"ש לנגה, ,לענין הסמ"ק מצירך', עלי ספר, ד (תשל"ח) 178–179.

80 דייויס, שטרות, 34.

81 שם, עמ' 302, שטר שידוכין משנת 1271. יש להעיר שהמונח ,תשומת-יד' אינו מלמד בהכרח שהמשכון אכן נמסר מיד ליד. על ההתפתחויות שחלו במונח זה, ראו: פלק, נשואין וגירושין, 87, הערה 46.

ואע״ג דכתוב בקניין ובקנס, אסמכתא לא קניא אלא בקניין ב״ד חשוב אפי׳ מעכשיו לפי ר״י, ומהר״ם ע(ו)בד כוותיה, ובתראה הוא׳.[68] תשובתו המפורטת של המהר״ם מינץ דנה בשיטות השונות ואף הוא מאמץ את דברי ההגהות מיימוניות בשם ר״י ,דאפי׳ דאמר דב״ד חשוב קנה היינו כשאמר מעכשיו׳.[69] כלומר, התנאים הנדרשים הם: הקנאה מעכשיו ובית דין חשוב.[70]

העולה מן המקובץ שכל חכמי אשכנז הנזכרים מאמצים להלכה את המסקנה שאסמכתא לא קניא אלא אם כן חברו שני תנאי היסוד הנזכרים: מעשה קניין מעכשיו ובפני בית דין חשוב.

בסיום תשובתו מוסיף רש״י את הדברים הבאים: ,וכל שכן שידוכי אשה שהנהיגו הראשונים כן שלא לבייש את בנות ישראל, ויש מן הדין לקנסו בממון, ובנידוי הגוף, והתלמיד החולק על זאת, אינו חולק כבוד לתורתו להחזיק יד מריע, ומן השמים מנועהו מכבוד, ונכסו ממנו גלויותיה של תורה וכל שכן יבין במעמקיה׳.[71] לדעתו, יש סברה להקל בדרישת בית דין חשוב בשידוכין יותר מאשר בסוגיות אחרות, מכיוון שביטול השידוכין כרוך בבושת וראוי לקנוס את המבייש.[72]

רעיון זה בדברי רש״י מהווה תשתית לכל החשיבה של חכמי אשכנז באשר למוסד השידוכין. מצויה כאן מערכת שלימה של גורמים שכרוכים אלו באלו ולהן תכלית אחת, חיזוקו של מוסד השידוכין. בצד הטלת הקנסות על צד שמפר את השידוכין, חוזקו השידוכין באמצעות גורמים נוספים. כך למשל אומר ר״ת שנהגו לאסוף את כל בני העיר למעמד השידוכין, וכן יצאה באשכנז הוראה חריפה נגד ביטול השידוכין.[73] הוראה זו מובאת בחיבור ,צדה לדרך׳ מתקנותיו של רבנו גרשם:[74] ,והחרם שמקבלי׳ האיש והאשה לשום תשומת יד כמו כן אי׳ להתירה כ״א בק׳ אנשים אך אין צרי׳ שיהיו מג׳ ארצות ותשומת יד בלא אדם אם יש חרם קדמונית לקיים תשומת יד אך להתירה בשלשים רשאי ואינם יכולים להתיר עד שיראו טעם בדבר׳.[75]

ביטול השידוכין באשכנז

החוקר א׳ גרוסמן קושר את המלחמה התקיפה נגד ביטול השידוכין באשכנז עם חיזוק מעמד האישה. ההנחה היא שכאשר התבטלו השידוכין היה זה החתן שגרם בדרך כלל לביטול. ביטול חד-צדדי זה עלול להעיד על פגם במשפחת הכלה וערעור מעמד הכלה. התיקונים שנעשו באשכנז בדיני המשפחה נועדו לחזק את מעמד האישה, ובאור זה יש לראות גם את המלחמה נגד ביטול השידוכין.[76]

68 שו״ת מהרי״ל החדשות (ירושלים: מכון ירושלים, תשל״ז) אבן העזר, סימן קצ, עמ׳ ש-שב. על התייחסותו לעניין הבושת, ראו להלן, סעיף ח.

69 מכירה, יא, אות ח.

70 שו״ת מהר״ם מינץ (ירושלים: מכון ירושלים, תשנ״א) א, סימן יא, עמ׳ מא-מח, בעמ׳ מג. על התייחסותו לאסמכתא בשידוכין ראו להלן, סעיף ח.

71 ספר האורה, שם; תשובות חכמי צרפת ולותר, שם, בשינויים קלים.

72 על משמעות עניין הבושת ותוקפה, ראו להלן, סעיף ח.

73 נדרים כז ע״ב, ד״ה והלכתא.

74 שם, דף רנז א (55 א).

75 והשוו: L. Finkelstein, *Jewish Self-Government in the Middle Ages* (Connecticut: Greenwood Press, 1972) 141.

76 א׳ גרוסמן, ,ייחוס משפחה ומקומו בחברה היהודית באשכנז הקדומה׳, בתוך: פרקים בתולדות החברה היהודית בימי-הביניים ובעת החדשה, ספר היובל ליעקב כץ (בעריכת ע׳ אטקס וי׳ שלמון) (ירושלים:

מהו בית דין חשוב? °

כדי לנסות להשיב על השאלה מהו בית-דין חשוב, מן הראוי להתחקות אחר הגדרותיו בספרות ההלכה. בתשובת גאונים מצאנו:

ואשר כתבת והא דאמור רבנן בכמה דוכתא והוא דקנו מיניה בבית דין חשוב. חשוב לאפוקי מאי, ובית דין שאינו חשוב כגון מאן. דבר זה ברור הוא, בית דין שיש בו תלמיד חכמים שניזכר במקומו ובסביבות מקומו בחכמה, ובזמן שאומרין פל׳ דיאן בכך וכך רבים שותקין לדבריו ומאזינין, ובזמן שחושבין את חכמי ישראל ואת בתי דיניהן חושבין אותו בכללן, ההוא בית דין חשוב. ואשר איננו כך אינו חשוב...[65]

בית הדין צריך להיות מפורסם בחכמתו במקומו ומחוצה לו. שֵם הגאון המשיב וזמנו לא נודעו, אך תשובה מאוחרת יותר שנמסרה מפי רש״י מעמידה הגדרות אחרות:

וששאלתם ששידך ראובן על בת אחיו את בנו, וקיימו דבריהם, והניחו תשומת יד ביד קבלנין על מנת שהחוזר בו יפסיד, כדרך שהורגלו בשאר מקומות ועברו כמה שנים וחוזר בו ראובן, והנה שמעון אחיו תובע הערבון מיד הקבלנין שהחזירוהו לראובן ותלמיד אחד מסייע ליה ואמר קבלן דכתובה לא משתעביד. ועוד דאסמכתא הוא. ואסכת׳ (!) לא קניא, טעה התלמיד בכל צדדיו, חדא דקבלן דכתובה משתעביד דמשה בר עצורי ערביה דכתובה דכלתיה הוי וכו׳; ומותבינן וערב דכתובה מי משתעביד, ומשנינן קבלן הוה. ועוד מה ענין קבלנות זה אצל קבלנות דכתובה, המתפיס לאשתו מעות או מטלטלין בכתובה ומסרתן ליד שליש [כצ״ל] והחזירן לבעלים אצל קבלנות זו אינה אלא עירבון לקיים תנאין, ואסמכתא וודאי קניא, ואם נעשה בפני חשובי העיר קיימא לן דאסמכתא קניא, והוא דקנו מיניה בבית דין חשוב ואפילו יש בית דין חשוב ממנו בשאר מקומות, אין לנו אלא בית דין של אותו מקום, דאם כן אין לדבר סוף. שאין לך בית דין חשוב שאין חשוב ממנו בסוף העולם. ואומר אל השופט אשר יהיה בימים ההם [דברים י״ז ט׳], וכל שלשה שנתמנו בית דין על ישראל, הרי הן כבית דינו של משה, לענוש נכסין, ולהיות הפקירן הפקר.[66]

מתשובתו זו של רש״י אנו למדים מספר עניינים מהותיים לגבי האסמכתא בשידוכין: א. הקנסות בשידוכין נגועים בנגע האסמְכתא, אף שמדובר בהתחייבויות הדדיות. ב. לסילוק האסמכתא לא דיי בהקנאת הערבון מעכשיו ואף לא במסירתו לאחר, אלא יש לצרף לכך בית דין חשוב. ג. דיי בכך שבית הדין חשוב באותו מקום, אף אם יש חשוב הימנו במקומות אחרים. ד. שם של בית דין ניתן לכל שלושה שנתמנו לכהן בבית דין.

המהר״ם מרוטנבורג חולק על השיטות שסוברות להלכה שאסמכתא קניא והוא סובר כמסקנת הגמרא בנדרים שהאסמכתא קונה רק בהתקיים שני התנאים, הקנאה מעכשיו ומעמד בית דין חשוב.[67] כך סובר במפורש גם מהרי״ל בתשובתו: ,כיון דאסמכתא היא,

הנזיקי של הבושת, בדברי בעלי התוספות, שם, ועל תוקפה המשפטי, ראו להלן סעיף ח.

65 תשובות הגאונים, מהדורת הרכבי (ברלין: איצקובסקי, תרמ״ז, מהדורת צילום, ירושלים תשכ״ו) סימן רמ, עמ׳ 117–118.

66 ספר האורה (ירושלים: מפיצי אור, תשי״ט), ב, סימן קמא [התשובה מובאת גם בתוך: תשובות חכמי צרפת ולותר, סימן כז, דף יד ע״א–ע״ב, בשינויים קלים].

67 שו״ת מהר״ם מרוטנבורג, ד (דפוס פראג) סימן תתקעו, דף קמא ע״ב – קמב ע״א. על הצעותיו לפתרון ראו להלן, סעיף ח.

חשוב הרי זה קנה...'.[53] יש סוברים שאין די בבית דין חשוב אלא שיש לעשות את הקניין ,מעכשיו' ויש סוברים שהתחייבות בבית דין חשוב מסירה את פגם האסמכתא גם אם לא נעשה הקניין ,מעכשיו'.[54]

הקנאה מעכשיו בבית דין חשוב

העיון בשטרות, בספרי שטרות ובמקורות ההלכה מגלה שבדרך כלל קיימת הקפדה על ההקנאה מעכשיו, אך לא כן לגבי הדרישה לבית דין חשוב. בשאלה אחת שנשלחה לרמב"ם נאמר: ,והיה הקניין מידי שניהם בזה בבית דין חשוב';[55] אך בתשובה אחרת לא נזכר שהיה הדבר בבית דין חשוב: ,לפי שמלת מעכשיו מבטלת שתהיה זו אסמכתא';[56] גם ממספר תשובות אחרות של הרמב"ם עולה שאין הקפדה על בית דין חשוב.[57] תמונה דומה עולה משטרי השידוכין. עשרות שטרות מגניזת קהיר כוללים את נוסחת ,מעכשיו' אך נעדרת מהם הדרישה לבית דין חשוב.[58] וכך גם בספר השטרות לרבנו יהודה הברצלוני שבו נאמר: ,ואם חס ושלום הייתי מעכב אותו עת מלהשלים לו כל תנאים אלו... מעכשו הקניתי לו לפלוני זה';[59] וכך בספר העיטור: ,ואי מעכבנא... אקניתי ליה מהשתא'.[60]

ראוי להדגיש שהקפדתם על ההקנאה מעכשיו מלמדת שהם ראו בכך הסדר שנגוע באסמכתא ולכן ביקשו לסלקה, עם זאת, אין הקפדה על מעמד של בית דין חשוב. לאור מסקנת הסוגיה בנדרים ופסיקת הרמב"ם, נשאלת אפוא השאלה לאן נעלם בית הדין החשוב?

אפשר שחלק מהמקורות שהובאו נוהג לפי שיטת המיעוט שסוברת שדיי בהקנאה מעכשיו ואין צורך גם במעמד של בית דין חשוב.[61] אך ההוראה בקהילות אשכנז הייתה שיש להקפיד הן על הקנאה מעכשיו והן על מעמד בית דין חשוב. כך אומר ר"י מבעלי התוספות: ,וא"כ ע"כ מיירי הכא דאמר מעכשיו ואפ"ה קאמר דדוקא בב"ד חשוב קנו מיניה אבל בלא קנין בב"ד חשוב לא מועיל...'.[62] מצטרף לדעתו גם ר"ת שאומר: ,שלכך נהגו לאסוף כל בני העיר בשעת שידוכין כי היכי דליהוו ב"ד חשוב';[63] דעתם היא שכיוון שמדובר בקנס שהוא למעשה התחייבות כספית מותנית שאין המתחייב רוצה בקיומה – הוא הרי בוודאי מתכוון לעמוד בהבטחת הנישואין והוא מצפה שכך ינהג גם הצד השני – יש כאן נגע של אסמכתא, וגם הקנאת הערבון מעכשיו אינה מרפאתו. בדעה עקרונית זו מחזיקים גם שאר חכמי אשכנז.[64] נוקבת היא אפוא השאלה מדוע אין מוצאים את קיומה של דרישה זו בשטרי אשכנז?

53 מכירה, יא, יג.

54 שו"ע חו"מ, רו, יד-טו. וראו: אנציקלופדיה תלמודית, ב (ירושלים: מוסד הרב קוק, תשי"ב) ערך: אסמכתא (ב), עמ' קח-קטז. וראו עוד בעניין זה להלן סעיף ה.

55 תשובות הרמב"ם, סימן מט, שם, א, עמ' 80.

56 שם, סימן פט, עמ' 145.

57 סימן רלז, שם, ב, עמ' 430-431; סימן רפא, שם, 530-532; סימן שפו, שם, עמ' 664-665; סימן שפז, שם, עמ' 665.

58 ראו: א' אשור, שידוכין על־פי תעודות מן הגניזה הקהירית, עבודת גמר לתואר שני (תל-אביב: אוניברסיטת תל-אביב, תש"ס) 61 ואילך.

59 ספר השטרות, הברצלוני, שטר עב, עמ' 128.

60 ספר העיטור, תנאי כתובה, א, מ ע"ב.

61 על השיטות השונות ראו: אנציקלופדיה תלמודית, שם.

62 נדרים כז ע"ב, ד"ה והלכתא.

63 שם.

64 ראו את שיטותיהם של רש"י, מהר"ם מרוטנבורג, מהרי"ל ומהר"ם מינץ, להלן בסמוך, סעיף ה. על ההיבט

ולפרוע הקנס.'[47] קליטתו של הקנס לוותה בבעיות הלכתיות-משפטיות. לקראת סוף המאה הי"א ובעיקר במאה הי"ב התעוררה שאלת אכיפת הקנס. בשאלה שנשלחה לר"י מיגאש עלתה בעיית האסמכתא בשידוכין, וכך גם בשאלות שנשלחו לרש"י ולרמב"ם. המשיבים נתבקשו לחוות דעתם לגבי התוקף המשפטי שיש לקנס, שהוא נגוע לכאורה בפגם של 'אסמכתא'.[48] הסוגיות התלמודיות שדנות באסמכתא אינן מוליכות למסקנה חד-משמעית, לפיכך מצויות בין חכמי ההלכה הבתר-תלמודיים דעות מספר בהגדרת האסמכתא, בדיניה ובפתרונות להסרתה.[49] אבל הגרעין המשותף לשיטות השונות מלמד שאם יש לפנינו התחייבות כספית, שהיא מותנית והיא אינה העניין העיקרי שבין הצדדים, אזי אין הם גומרים בדעתם לקיים את ההתחייבות והיא אינה מחייבת אותם.[50] חכמי ההלכה הציעו פתרונות למתן תוקף לקנס.

פתרון אחד לבעיית האסמכתא בשידוכין, ידוע בשם פתרון חכמי ספרד. על-פיו מסולקת ההתנייה שבהתחייבות ונשארת התחייבות מוחלטת ובלתי מותנית, התחייבות כזו אינה נחשבת ל'אסמכתא' כפי שמסכם זאת הרמב"ם: 'כשהיו חכמי ספרד רוצים להקנות באסמכתא כך היו עושין קונין מזה שהוא חייב לחבירו מאה דינרין, ואחר שחייב עצמו קונין מבעל חובו שכל זמן שיהיה כך או שיעשה כך הרי החוב הזה מחול לו מעכשיו ואם לא יהיה או לא יעשה הריני תובעו בממון שחייב עצמו בו. ועל דרך זו היינו עושין בכל התנאין שבין אדם לאשתו בשדוכין וכו''.[51]

פתרון אחר, הידוע כפתרון האשכנזי, התבסס על דברי התלמוד: 'והלכתא, אסמכתא קניא; והוא דלא אניס, והוא דקנו מיניה בב"ד חשוב'.[52] ההנחה היא שהפגם באסמכתא הוא היעדר גמירות הדעת של המתחייב ובשל כך נעדרת גם סמיכות הדעת של הנהנה. אבל, אם ההתחייבות תיעשה במעמד מכובד של בית דין חשוב, יושג יסוד גמירות הדעת ועמו סמיכות הדעת ויינתן תוקף משפטי מחייב להתחייבות. וכך פוסק הרמב"ם: 'אסמכתא שקנו מידו עליה בבית דין

47 שו"ת הרי"ף, מהדורת לייטער, סימן קא, דף לח ע"ב – לט ע"א. לדעת כ"ץ (נישואים, 38), הקנס היה גבוה והייתה בו ערובה לקיום התנאים.

48 'איך קנו ממנו בלשון מעכשיו שנתרצה מבלי אונס לישא את פלונית... יודיענו אדוננו אם מה שהעידו בו... הוא אסמכתא' תשובות אבן מיגאש, סימן קלה, עמ' קכט; 'ששידך ראובן על בת אחיו וקיימו דבריהם והניחו תשומת יד ביד קבלנים על מנת שהחוזר בו יפסיד ערבונו... ועוד דאסמכתא הוא ואסכת' (!) לא קניא' שאלה שהופנתה לרש"י בתוך: תשובות חכמי צרפת ולותר, מהדורת י' מילר (וינה: דפוס לוי, תרמ"א, מהדורת צילום, ירושלים, תשכ"ז) סימן כז, דף יד ע"א; 'והתנאי ביניהם, שמי שיפר (התנאים), חייב לפרוע לאחר עשרה דינרין... מעכשיו' תשובות הרמב"ם, מהדורת י' בלאו (ירושלים: מקיצי נרדמים, תשמ"ו) א, סימן פט, עמ' 144–145. החל מתקופה זו נקשרת בעיית האסמכתא לקנס השידוכין ותשובות רבות נכתבו בקשר לכך. בחלקן קובע המשיב שאכן קיימת בעיה, ההסכם נגוע באסמכתא ולפיכך הוא אינו מחייב את הצדדים, כך למשל השיב הר"י מיגאש בתשובתו שנזכרה למעלה. באחרות נקבע שהמפר חייב לשלם את הקנס או משום שאין כאן אסמכתא כלל או משום שהיא נתרפאה, כך בשתי התשובות האחרות הנזכרות כאן.

49 ראו: א' גולאק, יסודי המשפט העברי (תל-אביב: דביר, תשכ"ז) א, עמ' 67–85; ש' אלבק, דיני הממונות בתלמוד (תל-אביב: דביר, תשל"ו) 317–332; I. Herzog, *The Main Institutions of Jewish Law* (2 vols.; London and New York: Soncino Press, 1965) 1:71–92.

50 התלמוד דן בדיני ה'אסמכתא' בכמה מקומות, ביניהם בסוגיית פסולי עדות שנזכרו במשנה סנהדרין ג, ג. על משחק בקוביא אומר רמי בר חמא: משום דהוה אסמכתא, ואסמכתא לא קניא, סנהדרין כד ע"ב. וראו בהרחבה על מקורות התלמוד אצל: ב' ליפשיץ, אסמכתא, חיוב וקניין במשפט העברי (ירושלים: מאגנס, תשמ"ח) 1–117.

51 רמב"ם, מכירה, יא, יח.

52 נדרים כז ע"ב.

מחקר תעודות הגניזה תומך בהשערה שהתחזקות מוסד השידוכין קשורה לאיחוד טקסי הקידושין והנישואין.[39] כידוע, בתקופת התלמוד הייתה מתבצעת הכניסה לחופה כי״ב חודשים לאחר הקידושין.[40] נוהג זה נמשך גם בתקופת הגאונים. רק לקראת סוף תקופת הגאונים החלו לצמוח ניצנים של איחוד הטקסים הללו.[41] לאחר תקופת הגאונים מתרחבת מגמת האיחוד ומתפשטת בתפוצות ישראל.[42] חיזוקו של מוסד השידוכין קשור אפוא לתהליך זה. עם איחודם של טקסי הקידושין והנישואין נוצר צורך בטקס כלשהו שיקדים את הכניסה לבית המשותף ולחיי המשפחה בין בני הזוג. טקס השידוכין במתכונתו הקדומה לא יכול היה למלא תפקיד זה, ולכן התבקש חיזוקו המשפטי. כותב על כך פריימן: ,חיזוק השידוכין למוסד משפטי מוצק שבא למלאות בחיים את מקומם ותפקידם של האירוסין הקדומים׳[43] החיזוק התבטא בהטלת סנקציות משפטיות על צד שיפר את קשר השידוכין וימאן להמשיכו על-ידי הקידושין והנישואין. הסנקציות היו: קנסות וחרמות. נדגיש עם זאת, שכל השינויים הללו לא התרחשו בבת-אחת בכל תפוצות ישראל, ובוודאי התקיימו נהלים שונים בו-זמנית בקהילות שונות, ובאותם מקומות שכבר אוחדו טקסי הקידושין והנישואין, חוזקו השידוכין שקדמו להם על-ידי הקנס.

הקנס והאסמכתא

קביעת קנסות בשידוכין החלה כפי הנראה, בשלהי תקופת הגאונים ויש לשער שהקנס אכן שולם על-ידי הצד שהפר את הסכם השידוכין. כך, למשל, מובאת בספר העיטור עדות קדומה בעניין זה: ,וכתב רבינו משמיה דגאון שכותבין על החתן שאם יחזור בו ולא יכנוס יהא עליו קנס כך וכך אעפ״י שקיבל יותר ממנהג ידוע שבמקומו, מחויב באותו קנס׳[44] ובתשובות הר״י מיגאש: ,ראובן שדך בתו עם שמעון... וכתב על עצמו סך ידוע חוב גמור בהודאה גמורה אם לא ימסור אותה לו לזמן ההוא׳;[45] שמעון שדך בתו עם ראובן ועשו על עצמן קנס אם נמנע אחד מהם מלכנוס לזמן שהסכימו עליו׳[46] ובתשובת הרי״ף: ,ומאן בקידושין לגמרי

גם בעניינים שבהם קשורים הצדדים בהתחייבות משפטית, ודוגמאות רבות לכך. ראו למשל: שו״ת הרי״ף (פיטסבורג: מכון הרמב״ם, תשי״ד) סימן רכג, דף סג ע״א; שו״ת הרדב״ז, א (ניו-ג׳רזי: הרצים, תש״י) סימן רעה, דף מד ע״א, ועוד. גם לדעת חכמים נוספים. קשורה המחלוקת בין רס״ג לאחרים בחיזוק מוסד השידוכין, ראו אצל פלק, נשואין וגירושין, 87-88; א׳ גרוסמן, חסידות ומורדות - נשים יהודיות באירופה בימי-הביניים (ירושלים: מרכז זלמן שזר, תשס״א) 96.

39 ראו: פלק, נשואין וגירושין, 74; ריבלין, ,מוסד השידוכין׳

40 משנה כתובות ה, ב.

41 על הביקורת שהעלו הגאונים על ההפרדה בין הטקסים, ראו: א״ח פריימן, סדר קידושין ונישואין (ירושלים: מוסד הרב קוק, תשכ״ה) עמ׳ יז-יט.

42 ,התפתחות המנהגים הביאה בסוף המאה הי״א ובתחילת המאה הי״ב... לידי התמזגות סדר הקדושין והחופה לטכס אחד׳ פריימן, קידושין, עמ׳ לא.

43 שם, עמ׳ לב. וראו: י׳ כ״ץ, ,נישואים וחיי אישות במוצאי ימי הביניים׳ ציון, י (תש״ה) 21-54, ושם בעמ׳ 25.

44 ספר העיטור, מהדורת רמ״י (וורשה: אונטרהנדלר, תרמ״ג) ,פסיקתא׳ א, סו ע״ד. אף שנקבע קנס גם לניתוק זיקת האישות לאחר הקידושין, כפי שמצוי בתשובותיהם של הרי״ף והר״י מיגאש, נראה שכאן עוסקים אנו בקנס של הפרת השידוכין. כך נראה לכאורה מהקשר דברי העיטור, וכך הבין זאת גם המהדיר. שם, הערה יח, שכתב על כך: ,עיי׳ מדיני הקנסות של שידוכין באהע״ז וכו׳׳

45 ספר שאלות ותשובות רבנו יוסף הלוי אבן מיגאש (ירושלים: לב שמח, תשנ״א), סימן עג, עמ׳ סו.

46 שם, סימן קכג, עמ׳ קטז-קיח. אומנם בסימן קלה (עמ׳ קכח-קל), עלה עניין האסמכתא, אך נראה שהייתה שם בעייה של גמירות הדעת בעצם השידוכין, וצ״ע.

לשאלה שנשאלה. בוודאי הייתה שאלתנו מיותרת אם המבטל היה מתחייב בפיצוי כספי על מעשהו. במקרה כזה היינו מניחים שכיוון שלא נמסרה הודעת ביטול על-ידי אחד מהצדדים, בוודאי התכוונו שני הצדדים גם בשעת המעשה, לאותה פלונית המשודכת לו משכבר הימים. השאלה נשאלה אפוא על רקע שבו לא היה לשידוכין כל תוקף משפטי מחייב. ואכן רב סעדיה משיב: ,הרי נתברר כי מכל מקום אם כן היה המעשה הרי נאסרו שתי בנות ראובן על שמעון וצריכות ממנו שני גיטין ואין משגיחין לשידוכי שמעון הראשון. ואין צריכין לתת טעם שאילו בקש לחזור בו משידוכין היה יכול׳ כלומר, כיוון ששמעון יכול היה לחזור בו מהשידוכין בכל עת, הללו אינם יכולים להוות שיקול בהכרעה ואין משגיחים בהם.[35]

בתקופת בעלי התוספות פסקו בדרך שונה: ,מעשה בא לפני ר״ת בבנו של ה״ר אושעיא הלוי שקידש בת עשיר אחד ואמר בתך מקודשת לי סתמא ולא פירש פלונית בתך ואמר ר״ת דמקודשת ולא מיבעיא אם שידך באחת מהם בשם ואח״כ קידשה סתם דאדעתא דהכי קידשה אלא אפי׳ לא שידך בשם אלא שנתרצו בפה ואמר פלוניתא אתן לך יש לנו לומר דאדעתא דהכי קדיש דשארית ישראל לא יעשו עולה ולא ידברו כזב׳[36] ובמאה הי״ד דן רבנו נסים בבעיה זו או בדומה לה, ואף הוא הכריע בדרך שונה מהכרעתו של רס״ג: ,דאמרי׳ דמסתמא דעתו היה על אותה ששדך וכן אביה בשבילה קבל קדושיה דשארית ישראל לא יעשו עולה ולא ידברו כזב׳[37] כלומר, הר״ן מורה ששמעון, שבמקרה שלנו שידך לו בת אחת מהשתים, התכוון גם לקדש אותה ולא את זולתה, וזה היה גם רצונו של האב. נקודת המחלוקת בין החכמים הנזכרים היא האם השידוכין יכולים להוות אמת-מידה לכוונתו של המקדש. בשלבו את הנימוק ,ואין משגיחין לשידוכי שמעון׳ מבקש רס״ג לומר שאין השידוכין מהווים ,גילוי מילתא׳ הספק נותר בעינו, ומכאן התוצאה של שני גיטין. הר״ן לעומתו סובר שהשידוכין מהווים אמת-מידה לכוונתו של המקדש, ובוודאי התכוון לקדש את זו שנשתדכה לו. הר״ן מחזק את דבריו בהדרשו לפסוק ,שארית ישראל לא יעשו עוולה׳ רצונו לומר: מכיוון שאין ראוי לבן ישראל לבטל את דבריו באופן חד-צדדי, בוודאי כוונתו של המקדש למשודכתו. נשאלת השאלה האם רס״ג אינו רגיש דיו ל,שארית ישראל לא יעשו עוולה׳? התשובה חייבת להתבסס על ההבדל ברמת ההתחייבות שבשידוכין בין תקופתו של רס״ג לתקופתם של החולקים. המהרי״ק מגדיר זאת: ,כיון שיש עליו תקנת הקהילות לא שביק לה ומקדש אחרת וכו׳ ואפי׳ במקום שאין תקנה מ״מ שארית ישראל לא יעשו עולה׳ הוא רואה אפוא את המחלוקת נעוצה בחוסנו של מוסד השידוכין.[38]

35 לדעתי, זו הפרשנות היחידה ההולמת את דברי רס״ג שאמר: ,ואין משגיחין לשידוכי שמעון הראשון׳ אין אפשרות לדעתי, לקשור את פסיקתו של רס״ג לעובדה שהמקדש לא ביטא בשפתיו את שם המתקדשת. ראשית, אין ההלכה מעמידה דרישה כזו כתנאי בל יעבור לקיומם של קידושין. דיי, לעניין זה, בכוונה ברורה שאין בה ספיקות. זאת ועוד, אם אכן זה היה הפגם, הרי התוצאה הייתה צריכה להיות שאף לא אחת מקודשת, ולא כפי שפסק רס״ג. כמו כן, אין כל משמעות לפי זה לנימוק, שאין משגיחין בשידוכי שמעון. מכאן, שגם רס״ג מסכים לכך שאם היה גילוי דעת ברור לגבי זהות המתקדשת, אף ללא אמירה מפורשת, דיי היה בו כדי להכריע את הספק, ורק אחת מהן הייתה מקודשת. אך מכיוון שאין גילוי כזה, נשאר הספק בעינו, ושתיהן צריכות גט. להרחבת הדברים ראו: ריבלין, ,מוסד השידוכין׳

36 קידושין נב ע״א ד״ה והילכתא. וראו בדיון המובא בשולי התשובה של רס״ג, תשובות הגאונים שערי צדק, שם.

37 קידושין נא ע״א ד״ה וגרסי׳ בגמ׳.

38 שו״ת מהרי״ק (ירושלים: אורייתא, תשמ״ח) סימן קע, עמ׳ שסד, ד״ה ויתר על זה. בתקנת הקהילות, מתכוון המהרי״ק לחיזוק שנעשה במוסד השידוכין בהטלת קנסות וחרמות על המבטלם. מפרשנותו של המהרי״ק וממקורות נוספים בתר-תלמודיים עולה שחלה הרחבה בשימוש בפסוק ,שארית ישראל׳ בעוד שבמקורות התלמודיים הוא בא רק בקשר לאירועים שאין בהם התחייבות משפטית בין הצדדים, עתה משולב הוא

זו כשלעצמה יש בה כדי לחזק את ההנחה שלא היה לשידוכין כל תוקף משפטי מחייב.[29] מקור חשוב אחד מתקופתו של רב סעֲדיה גאון,[30] יכול להעיד על מעמד השידוכין בתקופה זו. בשאלה שנשלחה לגאון מקירואן שבצפון אפריקה נאמר:

> מעשה שהיה במקומנו ראובן היו לו שתי בנות ושידך שמעון לאחת מהן ונתרצה לו. וכך המנהג במקומנו ובשעה שהוא רוצה לקדש את הנערה, אם בוגרת היא מרשת את אביה לקבל קדושיה ואם קטנה היא מקבל קידושיה מדעתו כמנהג חכמים. ובאין הקהל לבית הכנסת שמתפלל שמה אבי הנער׳ ומקבל קידושי בתו בבית הכנסת... ועמד שמעון ממקומו ונתן קידושין לראובן... פתח שמעון ואמר תהא בתך מקודשת לי בטבעת זו. ואמרו לו בלשון הקדש פרש פרש כמו ד׳ וה׳ פעמים ולא שם לבו לדבריהם שנבהל בעמדו לפני התלמידי׳ ולפני הקהל. לאחר שישב במקומו אמרו לו התלמידים שיושבין בצדו: טול ממנו שני גיטין לשתי בנותיך ששתיהן נאסרו עליו לפי שלא פירש איזו מהן קידש. והשיב ראובן ואמר פלונית בתי קידש ואעפ״י שלא פירש עכשיו לפניהם... ואף שמעון ענה ואמר לא קדשתי אלא פ׳... השיבו התלמידים ואמרו: אף-על-פי שהעדים מעידין ששידכת פלונית ועל דעת כך קדשת, כיון שלא פירשתה שמה... כבר נזקקו לך שתיהן ושתיהן נאסרו עליך וצריך אתה לשני גיטין... ילמדנו אדוננו הלכה כדברי מי מהן.[31]

השואל מציין שמנהג אנשי מקומו, הוא שהאב מקבל קידושין עבור בתו. הבנות הבוגרות היו מייפות את כח אביהן לקבל עבורן קידושין. ואם היא קטנה יכול האב לקבל קידושין עבורה, מדין תורה, אף ללא הסכמתה וידיעתה.[32] באירוע שלפנינו נוצר אפוא ספק מי משתיהן מקודשת. התלמידים שנכחו באירוע אמרו לראובן לקבל שני גיטין משמעון, גט אחד עבור כל אחת מבנותיו.[33] שהרי אם כל אחת ספק מקודשת לו, אין שמעון יכול לחיות אף לא עם אחת מהן, משום איסור אחות אשתו בחייה, אף אם יגרשנה.[34] רס״ג מתבקש להשיב כיצד יש לנהוג במקרה זה. לכאורה, השאלה מתמיהה ביותר. הרי אחת הבנות כבר נשתדכה לשמעון, האם אין זה ברור ופשוט, שהקידושין שנעשו עתה הם המשך למעשה השידוכין? מדוע קיים ספק שמא הוא מתכוון לבטל את שידוכיו עם הראשונה ולקדש את השניה. יתירה מזאת לאחר מעשה משהועלתה הבעיה מבהיר שמעון בצורה שאינה מותירה מקום לספק: ,לא קדשתי אלא פ׳ [כלומר זאת המשודכת לי] ומרוב שנבהלתי לפניהם לא פירשתי שמה׳; ואף ראובן אבי הבת מחרה מחזיק אחריו וטוען: ,פלונית בתי קידש ואעפ״י שלא פירש עכשיו לפניהם הרי עדים שלא שידך אלא לפלונית׳.

יש לשער שאם בתקופה המדוברת היה תוקף משפטי מחייב לשידוכין, וביטולם על-ידי אחד הצדדים היה מחייבו להודיע מראש לצד שכנגד, לפייסו ולהרגיעו, לא היה כלל מקום

29 ראו: ז׳ פלק, נשואין וגירושין, תקונים בדיני המשפחה ביהדות אשכנז וצרפת (ירושלים: מפעל השכפול, האוניברסיטה העברית, תשכ״ב) 76–77; י׳ ריבלין, ,התפתחות מוסד השידוכין לאור שטרי הגניזה, דברי כנס החברה לחקר התרבות היהודית-הערבית של ימי הביניים׳ ספונות, כג (תשס״ג) עמ׳ 88–115.

30 נפטר בשנת 942.

31 תשובות הגאונים שערי צדק (ירושלים: כלל ופרט, תשמ״ו) חלק ג, שער ג, סימן יב, עמ׳ מ–מג. ראו: מ׳ בן-ששון, צמיחת הקהילה היהודית בארצות האסלאם, קירואן 800–1057 (ירושלים: מאגנס, תשנ״ו) 195.

32 משנה קידושין ב, א; בבלי, שם, מא ע״א.

33 הכוונה, כאמור, שהאב ישמש כשליח של בנותיו לקבלת הגט. ראו: רמב״ם, גירושין, ו, ט.

34 רמב״ם, איסורי ביאה, ב, ט.

העדות לרמת בוררות. הנה לפנינו שטר השידוכין מחיבור ,צדה לדרך'; פשוט בתנאיו, וללא כל שבועה, וגם בו נתמנו העדים לבוררים. זאת ועוד, אם אכן תכלית יצירת הבוררות היא לפקח על מילוי התנאים, היינו מצפים שהדבר יודגש בעת קביעת התנאים ופרטיהם. כמו כן היינו מצפים שתהיה התחייבות הדדית לקבל את פסק הבוררים ולא לערער אחריו, כמקובל בשטרי הבוררות שנזכרו. בכל שלושת השטרות מסתיים תפקידם של הבוררים לאחר משפט הפתיחה והם אינם נזכרים עוד בתפקידם זה. נראה לי אפוא שיש לחפש הסבר אחר, לתכלית יצירת הבוררות. לדעתי, מעמד הבוררות לא נוצר כדי לתת הרשאה לעדים לפקח על מילוי התנאים ההדדיים, אלא כדי לתת תוקף להתחייבויות עצמן. כלומר, הבוררות כאן אינה פרי יוזמה חופשית ורצונית של הצדדים אלא נכפתה עליהם מתוקף הנסיבות, בדיוק כפי שנעשה בשטר האחר – שטר גביית כתובה.[23] כדי לעמוד על הנסיבות המיוחדות של שטר השידוכין יש לעיין בתהליך התפתחותו של מוסד השידוכין.

מעמד השידוכין

חז"ל קבעו שעל הצדדים או באי כוחם להקדים, להיוועד ולשוחח לפני הקידושין. לכן אומר שמואל בתלמוד הירושלמי: ,המקדש בלא שידוכים לוקה';[24] וכך נהג גם רב על-פי מסורת שהובאה בבבלי.[25] עם זאת, היה תוקף לקידושין גם אם לא קדמו להם שידוכין.[26] יתירה מזאת, מסתבר, שבתקופה התלמודית ומייד לאחריה, לא היה כל תוקף משפטי מחייב לשידוך. כלומר, לא רק שהשידוכין לא שינו את המעמד האישי של המשודכים וניתוק הקשר ביניהם לא היה כרוך בגט או בדומה לו, אלא המבטל את השידוך אף לא היה צפוי לכל סנקציה אזרחית.[27]

אפשר להניח שהוראותיהם של שמואל ורב נשמרו, אף שבכל הספרות התלמודית יש שני מקורות עיקריים בלבד שדנים בהשלכות ההלכתיות של שידוכין.[28]

היעדר תיעוד על מהות השידוכין ותוקפם מאפיין גם את תקופת הגאונים. גם עובדה

חייבים העדים להעיד על מהות האונס, היקפו וביטולו, ולא מצאנו שבשל מורכבות זו יקבלו העדים תוקף של בית דין. יתירה מזאת, בשטרי המודעה אפשר שהאונס אינו גלוי ומפורסם לכל ואילו בשטרי השידוכין שלפנינו מדובר באונס מפורסם. וראו להלן סעיף ח, בשטר שידוכין מאוחר שבו אכן נכתבו הנוסחאות הנדרשות לבוררות, ובכך הוא שונה במהותו משטרי השידוכין שלפנינו.

23 אף כאשר התגלעו חיכוכים בפועל, וזה עדיין לא היה המצב בעת החתימה על שטר השידוכין, נרתעו בעלי הדין מהגשת דינם לבתי דין או לבורְרוּת והעדיפו הסדרים אחרים. ראו: מ' פרנק, קהלות אשכנז ובתי דיניהן (תל-אביב: דביר, תרצ"ח) 33-32.

24 קידושין פ"ג ה"י, סד ע"ב.

25 קידושין יב ע"ב; יבמות נב ע"ב.

26 כך אומר שמואל במפורש בתלמוד הירושלמי, לעיל שם, וכך נפסק להלכה. ראו: רמב"ם, אישות ג, כב.

27 על שורת הקביעות הללו אפשר ללמוד בדרך השלילה. זיקת האישות מתגבשת במעשה הקידושין ולא בהליך אחר שקדם לו: מעשה השידוכין, בין אם מדובר רק בהסכמה להינשא, ובין אם מדובר בפסיקת המעות ,כמה אתה נותן לבנך וכו'' (כתובות קב ע"א), היה נגמר בדיבור בלבד. לכן יש שיטה שסוברת שמותר לבצעו בשבת: ,משדכין על התינוקות ליארס בשבת'; שבת קנ ע"א. חילוקי הדיעות בעניין זה הם סביב הפסוק ,ממצוא חפצך ודבר דבר'; כלומר, אם דיבור זה הוא ,חפצך' והוא אסור, או הוא ,חפצי שמים' והוא מותר, ראו: תוספתא שבת, טז, כב; בבלי, שבת, שם. היעדר מעשה קניין בוודאי יכול להצביע על כך שלא היה להליך זה משמעות משפטית מחייבת, והפרה חד-צדדית לא גררה תביעה או סנקציה כלשהי.

28 ראו: קידושין יג ע"א, הסוגיה עוסקת במי שחטף סלע מאישה וקידשה בו; שם, מד ע"ב, הסוגיה עוסקת בקטנה שהתקדשה שלא לדעת אביה. שתי הסוגיות עוסקות במקרים חריגים, לכן אין ללמוד מהן על היקף השידוכין במקרים הרגילים.

ומדוע התייחדה נוסחת הפתיחה של שטר השידוכין מכל נוסחאות הפתיחה האחרות?

מן הראוי לבדוק את ההשערה שהעֵדים התמנו לבוררים כדי לפקח על מילוי תנאי השידוך ולהכריע בעת שיתגלעו חילוקי דעות בין הצדדים. בשטר האחד נקבעו התנאים הבאים: 1. אבי הכלה מתחייב לתת לבתו נדוניה בסך חמישה עשר זקוקים כסף, עשרה בעת החופה וחמישה עד תום שנה ממועד החופה. 2. אבי הכלה מתחייב לספק לבני הזוג מלבושי שבת וחול, ריהוט בסיסי ומזונות במשך שנה. 3. אבי הכלה מתחייב לשכור מלמד עבור החתן. 4. נקבע מועד להעמדת החופה. אם לאחד הצדדים יארע אונס המפורסם לכל, תתקיים החופה תוך חודש ימים לאחר כלות האונס. 5. אי קיום התנאים יגרור הטלת חרם ותשלום קנס על המפר.[19] תנאי השידוך השני מורכבים יותר. 1. אֵם הכלה מעניקה עשרים זקוקים לאב החתן וכן ספר תנ״ך, תרגום והפטרות. 2. אבי החתן רשאי להלוות את הכסף ברבית לנכרים ולממן ברווח את החופה וצרכיה וכן את מלבושי החתן והכלה. בהתחשב בעובדה שהחופה אמורה להיערך ארבע שנים מאוחר יותר, בוודאי נצפה רווח ראוי. 3. אם יארע אונס מפורסם לאחד הצדדים אזי תדחה החופה עד חודש ימים לאחר חלוף האונס. 4. אבי החתן משעבד את כל נכסיו עבור המעות והספרים שקיבל מאם הכלה. 5. אי-כניסה לחופה יחייב את אבי החתן להשיב את הקרן וכן את מחצית הרווחים. 6. כמו כן הוא יחויב להחזיר את הספרים או ששה זקוקים כסף תמורתם. 7. הצדדים מקבלים על עצמם חרם בשבועה וכן קנס על הפרה חד-צדדית של ההסכם.[20] האם היו אלה התנאים המורכבים שהיוו עילה להעמדת בוררים במקום עדים רגילים? דומה שהתשובה היא שלילית. עיון בעשרות רבות של שטרות מעלה שברבים מהם הוצבו תנאים משונים ומורכבים ביותר ולא נדרשה בהם בוררות מוסכמת. הבה נטול דוגמה מאותה סביבה משפטית והיא קובץ השטרות האנגלי שלפנינו. באחד השטרות הותנו התנאים הבאים: 1. שלושה בנים מתחייבים לתת לאמם האלמנה בתוך מחצית השנה חמישה זקוקים כסף לפרנסתה. 2. כל רכושם משועבד לחוב זה. 3. אם הכסף לא יינתן לה היא רשאית ללוותם מגוי בריבית, והם אחראים לפרעון הקרן והריבית. 4. הבנים נשבעים למצוא שידוך לאחותם ולהכניסה לחופה בתוך תקופה של שלוש שנים, להעניק לה נדוניה בסך עשרה זקוקים כסף ולדאוג לכל צרכיה. 5. כֶּשֶל במילוי אחת החובות כלפי האחות מאפשר לה ללוות מגוי בריבית ולגלגל את כל העלויות עליהם. 6. הבית הגדול משתעבד למילוי החובות כלפי האחות. 7. אם תחסר פרנסה לאמם, יתנו לה בניה ככל אשר ישיתו עליהם חכמים. 8. אם ימאן אחד הבנים לציית לפסיקת החכם, תוכל האם ללוות מגוי בריבית ולהטיל את כל האחריות עליו. 9. בתמורה לכל התחייבותם מוחלת האלמנה על שיעבוד כתובתה שהוטל על הבתים והקרקעות שהניח בעלה. 10. האלמנה תגור בבית הגדול כל ימי חייה. אין הבנים רשאים לשכן עמה איש זר. 11. אם יבטלו הבנים את אחד התנאים, בטלה מחילתה.[21] האם אין מקרה זה שלפנינו קורא להקמת בוררות ולפיקוח על מילוי ההתחייבויות והתנאים? ברור, אם כן, שלא מורכבות התנאים היא זו שמזמינה את הבוררות.

שמא נניח שהשבועה היא שגררה את הבוררות? דומה שגם כאן התשובה היא שלילית. בשטרות רבים בקובץ מלווה השבועה את התחייבות הצדדים, אין בהם בוררות ומספר העדים הוא שנים.[22] נראה אפוא שלא התנאים ואף לא השבועה הם שגרמו להעלאת דרג

19 דייוויס, שטרות, 33–35.

20 שם, עמ׳ 299–302.

21 שם, עמ׳ 44–46.

22 שם, עמ׳ 17–19; 20–22, ורבים אחרים. גם סוגית בירור האונס ששימש עילה לאחד הצדדים לדחות בגינו את מועד החופה, אינו יכול להוות סיבה להקמת הבוררות. לשם השוואה, בשטרי מודעה וביטול מודעה

הנוסחה הנזכרת משמשת פתיחה לשטרי גביית כתובה ולשטרי שידוכין.[9] התפקיד שהוטל על הבוררים בעת תהליך גביית הכתובה מוגדר וברור: ,להשביעה ולהתפיסה כתובתה ובפנינו נשבעה בנטילת חפץ שלא נפרעה מכתובתה כלום לא בחיי בעלה ולא משמת עד יום שבאה לפנינו והגבינוה בכתובתה;[10] או: ,להתפיס ולהגבות למרת... כתובתה מנכסי בעלה... ונשבעה בפנינו על דעת שלשתינו בעשרת הדברות שלא היתה נפרעת מכתובתה לא בחיי בעלה הנקו[ב] ולא לאחר מותו;[11] אין זהות מוחלטת בין שטר זה לפסק הבוררות אך אפשר למצוא קווי דמיון ביניהם. הבוררים נתמנו לבצע פעולה מסוימת והם מודיעים באמצעות השטר שאכן הם בצעוה. יתירה מזאת, אפשר להניח שתכלית המינוי היא למלא את דרישת חז"ל. שכך שנינו: ,אין אלמנה נפרעת מנכסי יתומים אלא בשבועה נמנעו מלהשביעה התקין רבן גמליאל הזקן שתהא נודרת ליתומים כל מה שירצו וגובה כתובתה;[12] בגמרא נאמר: ,לא שנו אלא בב"ד אבל חוץ לבית דין משביעין אותה;[13] ופסק הרמב"ם: ,כשמשביעין ב"ד או היורשין את האלמנה כשתבוא לגבות כתובתה אין משביעין אותה אלא חוץ לב"ד;[14] אפשר אפוא שההסדר בא לענות על כל הדרישות. מצד אחד להשביעה כדי לקיים את הדרישה הבסיסית שאין להגבותה ללא שבועה, אך מצד שני, אין השבועה נעשית בתוככי בית-הדין אלא בפני בוררים. וכך נאמר במפורש באחד משטרי גביית הכתובה: ,ואדרנוה בבית דין ואשבענוה חוץ לבית דין;[15] לעומת זאת, תמוהה מאוד שילובה של נוסחה פותחת זו בשטרי השידוכין. הנוסחה קובעת: ,הוברנו... היות בית דין בין... ובין... והן הן התנאים אשר ביניהם ששדך... והתנה לתת...;[16] בהמשך מפורטות ההתחייבויות ההדדיות שבין הצדדים. מכאן שאין מדובר בשטר של פסק הבוררות. מצד שני גם אין לפנינו הגדרה ברורה שלשמה נוצרה הבוררות, כדוגמת נוסחת מינוי הבוררים שבשטרי רב סעדיה גאון ורב יהודה הברצלוני. למעשה מדובר בעדות רגילה שמעידים העדים על שידוך שנעשה בין הצדדים ועל התנאים המקובלים שהתנו ביניהם. במהותם זהים שטרי השידוכין לכל סוגי השטרות האחרים, שאין אף לא באחד מהם נוסחת בוררות.

נוסחת פתיחה זהה מצויה גם בקובץ שטרות מאשכנז מהמאה הי"ד, בתוך חיבור שנקרא ,צדה לדרך;[17] בקובץ זה מופיעה הנוסחה רק בשטר שידוכין, ולא מצאתיה בשטרי גביית כתובה אחרים מאשכנז. שאלה נוספת היא מה משמעות התוספת של ,ונתברכנו בעשרה'?[18] תוספת זו מצויה בכל שלושת טופסי השידוכין ורק באחד מתוך חמשת שטרי גביית הכתובה שבקובץ האנגלי. השאלה היא האם התייחדה תוספת זו לשטרי שידוכין בלבד, או שמא כל מינוי של בוררים היה כרוך בברכת עשרה? מהי אפוא תכלית מינוי הבוררים בשטרי השידוכין,

9 בקובץ מצויים יותר ממאה שטרות, כגון: חוב, מכירה, שכירות ואחרים, ובכולן נוסחת הפתיחה היא רגילה.
10 דייוויס, שטרות, 5.
11 שם, עמ' 109–110.
12 משנה גיטין ד, ג.
13 גיטין לה ע"א.
14 אישות טז, יא, וראו מגיד משנה שם.
15 דייוויס, שטרות, 337. על נוהג השבעת האלמנה באשכנז, ראו: שו"ת מהר"ח אור זרוע (ירושלים: אופסט מונזון, תש"ך) סימן קסה, דף נו ע"א.
16 שם, עמ' 33.
17 החיבור כולו מצוי באוסף מונטיפיורי, שהיה מופקד עד לעת האחרונה, בספריית London School of Jewish Studies (לשעבר Jews College) ומספרו 129–130. גולאק (אוצר השטרות, 8) פרסם את השטר, על השינויים מקריאתו אני עומד במהדורת השטרות שתפורסם במקום אחר.
18 ראו בנוסחאות המובאות לעיל הערה 5.

שהייתה בפנינו';[2] נוסחה דומה בשפה הארמית: ,שהדותא דהות באנפאנא';[3] הנוסחאות הללו מבוססות על הנוסחה התלמודית: ,בדוכרן פתגמא דהוו באנפנא';[4] שהייתה מקובלת כפי הנראה עבור מעשה בית דין, אך על-פיה נרקמו הנוסחאות המקובלות בשטרות.

בקובץ שטרות מאנגליה מהמאה הי"ג מצויה נוסחה שונה וזה לשונה: ,נחנו חתומי מטה הוברנו ונתברכנו בעשרה';[5] העדים פותחים את עדותם בציון העובדה שהם הִתמנו להיות בוררים ואף קיבלו את ברכתם של עשרה איש למינוים זה. פתיחה זו מבשרת לכאורה על הסדר של בוררות. כפי שידוע, מְלַווים שני סוגי שטרות את הסדר הבוררות, האחד בתחילתו והאחר בסופו. בשטר הראשון ממנים הצדדים את הבוררים. הנוסחה המרכזית בשטר זה כוללת בתוכה התחייבות לקבל את מרות הבוררים ופסיקתם. כך למשל בנוסחת שטר בירורין של רב סעדיה גאון נאמר: ,דאצטבינא ברעות נפשנא וקבילנא עלנא פל' בר פל' ופל' בר פל' או שלשה ושוינא יתהון דיאנא עלנא בדינא דכן וכן יתארו עצם הדין וכל מאי דפסקין עלנא נקבל על נפשנא בין לזכו בין לחובה';[6] ובנוסחת רבנו יהודה הברצלוני נאמר: ,אנו עדים החתומים למטה כך היה שאמ[רו] לנו פלוני ב"ר פלוני, הוו עלינו עדים... מחמת שרצינו ברצון נפשינו... ובירנו וקבלנו עלינו ועל עצמינו פלוני ב"ר פלוני... ושמנו אותם דיינין עלינו... וכל מה שיפסקו עלינו נקבל עלינו';[7] השטר השני מהווה פסק דין. ,בא לפנינו עדים ח"מ מעלות הברורים... שנקראו על ההפרדה אשר בין ר' משה... ובין מרת אליגריצה... וכך אמרו... איך אנחנו... גוזרין... שיתן הבית... והפסק דין הלז לא יפסל לא מחמת יתור וחסור לשון ולא יהיה רשות לשום אחד מהחלקים [= הצדדים] לסרב ולמאן'.[8]

אך העיון בתוכן השטרות בקובץ האנגלי מעלה שאין מדובר בשטרי בוררות רגילים.

2 מחזור ויטרי לרבנו שמחה, מהדורת שמעון הלוי איש הורביץ (נירנברג: בולקא, תרפ"ג) 788. וראו: סנהדרין כט ע"ב-ל ע"א, ורש"י שם, כט ע"ב, ד"ה דוכרן פיתגמי.

3 [עדות שהייתה בפנינו] ש' אסף, ,ספר השטרות לרב האיי גאון', מוסף לתרביץ, א, ג (תר"ץ) 20; 22 ועוד.

4 [זכרון דברים שהיו בפנינו], ב"ב קלו ע"א.

5 M. D. Davis, *Hebrew Deeds of English Jews (before 1290)* (London: Jewish Chronicle, 1888) 33. בקובץ זה מצויים ששה שטרות נוספים בהם אומרים העדים שהם הוברוו לצורך עדותם זו: 1. ,זכרון דברים שהיו בפנינו חתומי מטה... והוברנו להיות בית דין ונתברכנו בעשרה', עמ' 5; 2. ,זכרון עדות שהיתה בפנינו חתומי מטה... איך הוברנו להיות בית דין', עמ' 109; 3. ,אנחנו חתומי מטה הוברנו להיות בית דין', עמ' 137; 4. ,נחנו חתומי מטה [הוברנו] להיות בית דין', עמ' 178; 5. ,נחנו חתומי מטה הוברנו ונתברכנו בעשרה להיות ב"ד', עמ' 299-300; 6. ,נחנו חתומי מטה הוברנו היות ב"ד', עמ' 337. על סמכותם ההלכתית של חכמי אנגליה ועל תורתם, ראו: א"א אורבך, ,מתורתם של חכמי אנגליה מלפני הגירוש', בתוך: מחקרים במדעי היהדות (בעריכת מ"ד הר וי' פרנקל), א (ירושלים: מאגנס, תשנ"ח) 81-136.

6 [שרצינו ברצון נפשנו וקבלנו עלינו [את] פלוני... ומינינו אותם דיינים עלינו בדין זה... וכל מה שיפסקו עלינו נקבל על עצמנו בין לזכות בין לחובה], בן-ששון, רס"ג, 246.

7 שז"ח האלברשטאם, ספר השטרות להרב הנשיא רבינו יהודה בר' ברזילי הברצלוני (ירושלים: אופסט האמנים, תשכ"ז) 14-15.

8 א' גולאק, אוצר השטרות הנהוגים בישראל (ירושלים: דפוס הפועלים, תרפ"ו) 284. יש להעיר ששכיחות שטרי מינוי הבוררים רבה משכיחות שטרי פסקי הבוררות, ראו: י' פת, סוגית הבוררות בספרות ההלכה ונוסחי שטרות, עבודת גמר לתואר שני (רמת-גן: אוניברסיטת בר-אילן, תש"ס) 36 ואילך. אפשר שהדבר נובע מהעובדה שעם מתן פסק הדין אין נפקות מהותית לשאלת קביעות בית הדין. נוסחת הפסק הרגילה הולמת אפוא גם את נוסחת פסק הבוררים. בספרות השאלות והתשובות מתועדים מקרים בהם מונו אנשים למקבלי טענות ולבוררים והעדות נפתחת בנוסחה ,הוברנו', ראו: שו"ת הרשב"א, ד (ירושלים: מכון ירושלים, תשנ"ח) סימן קנב, דף סה ע"א; שו"ת זכרון יהודה (ברלין: פרידלנדר, תר"ו) סימן צב, דף מו ע"א; שו"ת מהר"ם מרוטנבורג, ד (תל-אביב: מהדורת צילום דפוס פראג, תשכ"ט) סימן תתקיז, דף קכז ע"א. שלוש הנוסחאות הן מאשכנז.

על נוסחת פתיחה ייחודית בשטרות

יוסף ריבלין
אוניברסיטת בר־אילן

A Unique Introductory Formula in the Jewish Bill

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The standard formula for the introduction of a bill normally reads, "It is known to us the undersigned." Yet in some of the Ashkenazic bills of betrothal from the thirteenth and fourteenth centuries, we find an unusual variation: "We the undersigned have been appointed arbitrators and have been blessed in the presence of ten." In my opinion, this reflects an attempt to augment the institution of betrothal and the penalty that would be levied upon a side to the arrangement that reneged. In order to ensure that the agreement was undertaken with full intention, the sages of Ashkenaz decreed on the basis of talmudic principles that the betrothal was to be executed in the presence of an esteemed rabbinic court, so as to underscore the full intention of the parties. Concerning the identity of such a "reputable rabbinic court," we may note that we find within the Geonic responsa literature in another matter the stipulation that the rabbinical court be one renowned for its sagacity in its locale and even beyond. In a later responsa that addresses betrothal, penned by Rashi, different criteria for the composition of the court are enumerated: "this is valid only if he acquires it from him within a reputable rabbinical court; and even if there is a more reputable court elsewhere, we must suffice with the court of that locale." Within a few generations we begin to hear that there is no need for renowned scholars to adjudicate the betrothal acquisition, and that it is sufficient that it be executed in the presence of individuals knowledgeable of the issues of full intent. This is implied in a responsa of Mahara"m Mintz to the effect that it is sufficient to have present three reputable individuals. The introductory formula of the betrothal bills may suggest, therefore, an interim period between that of Rashi, when great care was still exercised that three sages adjudicate the agreement and the period of the Mahara"m Mintz, where any three reputable individuals were sufficient. On the one hand, there is no need for bona fide sages, official members of the rabbinic court. Yet there still existed a requirement that these three be chosen, and that they be granted the authority of an ad hoc rabbinic court, a court of arbitration that was accepted in many instances.

נוסחאות הפתיחה השכיחות בשטרות פותחות במלים: ,יודעים אנו חתומי מטה';[1] ,זכרון עדות

1 נוסחת הפתיחה הנזכרת, היא נוסחה שמיוחסת לרב סעדיה גאון, ראו: מ' בן ששון, ,שרידים מספר העדות והשטרות לרב סעדיה גאון; שנתון המשפט העברי, יא–יב (תשמ"ד–תשמ"ו) 135–278, בעמ' 204, והשוו שם, עמ' 185. וראו: י' ריבלין, שטרי קהילת אליסאנה (רמת-גן: אוניברסיטת בר-אילן, תשנ"ה) 86 ואילך.

גם השפיע. אם נהגו ללמוד בעל פה הדבר היה מאפשר הרבה יותר חופשיות לגבי שילוב פירושים בגמרא וגם לפיתוח הסגנון הסופי.[196]

נראה שהמתודולוגיה בלימוד קטעים כאלו בכה״י התימניים צריכה לקחת בחשבון מגוון אפשרויות. אין אנו חייבים לקבל את ההנחה שכל הוספה שאינה משאירה סימן מובהק כפירוש היא חלק מן הענפים הקדומים. זהירות זו מחוייבת במיוחד כאשר מדובר בנוסח שמופיע רק בכתבי יד הבאים מאזור גאוגרפי מסוים! אנו צריכים גם לחשוב על אפשריות נוספות. נראה שהמסרנים בתימן היו שונים מאחיהם באשכנז וספרד. כמותם הם הרבו להשתמש בפירושים אבל לעתים יותר תכופות פירושים אלו נכנסו לגוף תלמודם.

נספח ב׳

תיאור כתב יד שוקן (מספרו בספרית שוקן 2023)

קיים כתב יד תימני שלישי (מקוטע) לבבלי פסחים. מורי ורבי ש״י פרידמן הפנה את תשומת לבי לכתב-יד זה הנמצא בספרית שוקן בירושלים. כתב-היד הוא במצב קשה ונשארו רק שמונה קטעים בלויים מן הפרק השלישי והפרק הרביעי של מסכת פסחים. בחלק מן הקטעים כמה דפים נדבקים ביחד וזאת הסיבה שבקטע אחד אפשר למצוא טקסט בצד אחד מפרק רביעי ובצד שני מפרק שלישי. נייר כתב-היד דומה לנייר של כ״י TJTS, ובזוויות אפשר לראות שהנייר חתוך בצורה מעוגלת כמו כ״י TJTS. צורת הכתב היא תימנית, והסופר שומר על הכתיב התימני המיוחד כמו בכה״י התימניים האחרים; לדוגמא: מותיבי = מיתיבי, ואו בעית = איבעית. ברור משני קטעים מפרק שלישי שהסופר נהג לכתוב את המשניות מפוזרות בתוך הפרק בסימן „מתני׳״ והוא מסמן את התחלת התלמוד בסימן „גמ׳״ כמו כ״י TJTS.

מן הפרק שלנו שרדו ארבעה קטעים הכוללים טקסט מדף נד ע״א וע״ב, ומדף נה ע״א וע״ב. הרצף הגדול ביותר של טקסט (לאחר חיבור בין שני קטעים) הוא מדף נד ע״ב („באב אינו כתענית צבו<.. ...>״) עד דברי רב פפא והפירוש הארוך לדבריו בדף נה ע״א. הנוסח בכתב-יד זה כמעט זהה לנוסח כתבי-היד התימניים האחרים ובמיוחד TJTS,[197] וכולל אף את ההוספות, שהן מסימני ההיכר של כתבי-היד התימניים בפרק „מקום שנהגו״.

תודתי נתונה למורי פרופ׳ ש״י פרידמן ופרופ׳ יוסף תבורי ולידידי פרופ׳ משה בנוביץ שקראו טיוטא של מאמר זה והעירו הערות חשובות.

196 ראה לעיל, ענפי הנוסח של פרק „מקום שנהגו״ ד״ה „כאשר כה״י התימניים״.

197 נראה לי שהאיכות של כתב-יד SCHO עולה על זו של כתב-יד TCOL שהוא מלא השמטות על ידי הדומות ושיבושים. במקרים של שיבוש בTCOL, כ״י SCHO גורס כמו כ״י TJTS. לדוגמא בדף נד ע״ב כ״י TCOL גורס: „כשאמרו ברחיצה אסור״ וכו׳, והיא גירסא יחידאית (נראה שהסופר החליף את סדר המילים בטעות). כ״י TJTS גורס: „כשאמרו אסור ברחיצה״ וכו׳, וכן הוא גם בכ״י SCHO.

רוזנטל כותב כאן: „ברור שדוגמא זו אינה בגדר אותם ,פירושים׳ מפורסמים שחדרו ל,פנים׳ מן ה,גליונות׳.״[191] ורצוננו לומר, שדבׂרי תלמוד קדומים ומקוריים לפנינו. ההוכחה היחידה שרוזנטל מביא לכך היא, שפירוש זה „אינו מנוסח כפירוש ללשון העניים, אלא הוא המשך דיבורו הישר של אביו של בן-בוהיין (,הכי קאמר להו׳).״[192] משמע, שלפי רוזנטל פירוש שמקורו מן הגליון חייב להשאר בסגנון פירוש ואיננו יכול להפוך לחלק מן המשא-ומתן של הסוגיא.[193] נראה לי שאין הדברים כה ברורים או פשוטים.

בעצם לפנינו לא לשון פירוש אחד אלא שני פירושים. נראה לי שנוסח התלמוד שהגיע לתימן היה קצר כM6, ונוסח קצר זה השאיר מקום לשתי שאלות: א. מה קשה באמירתו „לא מפני שעיני צרה״? ב. מה פירוש „כי היכי דלא לימרו דחויי קא מדחי לן״: איך חשבו העניים שהוא דוחה אותם? הרי בסוף הוא נתן להם כפלים!

לדעתי הלשון בכה״י התימניים כתשובה לשאלה א׳ היא לשון רש״י. הרי היא זהה מילה במילה לפירושו: „הא קא יהיב להו.״ אבל מסרני התלמוד בתימן שינו והתאימו להקשר. כאילו אלו הם דברי הגמרא עצמה, ולכן לא העתיקו את כל הדיבור של רש״י.[194] הם גם קיצרו את הקושיא כתוצאה מן הפירוש של רש״י, ובמקום „למה ליה למימרא להו״ כתבו רק „ו״ הקושיא, וזאת מפני שבפירוש מופיעה המילה „להו,״ ואין צורך לחזור עליה פעמיים.

לגבי שאלה ב׳, לא מצאתי פרשן מתקופת הראשונים שמפרש כן, אבל הרב דוד פרנקל בפירושו „קרבן העדה״ לברייתא זו בירושלמי כותב „לא שהית׳ עינו צרה – שנתן להם עתה בכפלי׳ כדי שידעו להבא שלא יתן להם פיאה.״[195] כלומר, גם הוא מפרש שההוה אמינא של העניים היתה שהוא נותן להם כפלים כדי שהם ידעו שהוא לא כתובת לפיאה בכל עת, או כדברי כה״י התימניים: „סבר [אביו של בן בוהיין] או [אם] בתורת פיאה [אני נותן להן], הוה בעינא מיהב להו כל שתא [אצטרך לתת להם בכל שעה].״ נראה לי שפירוש זה התחיל בגליון וכמו פירושים אחרים נכנס פנימה וקיבל צורה של גוף התלמוד. דבר זה קרה בכמה שלבים. בשלב ראשון פירשו את המילים הלא ברורות „דחויי קא מדחי לן״: „אשתמוטי הוא דקא משתמיט ממנו״ כלומר לא שהוא דוחה אותנו לגמרי אלא מנסה להשתמט מן החובות שלו. ייתכן שבשלב זה היה הנוסח כך:

ולא מפני שעיני צרה הא קא יהיב להו!
הכי קאמ׳ כי היכי דלא לימרו אשתמוטי הוא דקא משמיט לן.
[סבר או בתורת פיאה הוה בעינא מיהב להו כל שתא]

אבל אפילו כך עדיין היה מקום להוסיף ולברר עוד יותר. ולכן ייתכן שהוסף בגליון: „סבר או בתורת פיאה הוה בעינא מיהב להו כל שתא,״ כפירוש ל„אשתמוטי.״ בשלב הסופי היתה מגמה לצרף הכל יחד כאילו הכל חלק מן המשא ומתן של הגמרא. ייתכן מאד ששיטת הלימוד בתימן

191 ראה: רוזנטל, „תולדות הנוסח,״ עמ׳ 27.
192 שם, עמ׳ 28.
193 בדוגמא 23 (במאמרו „תולדות הנוסח״) רוזנטל משתמש בכלל זה להוכיח שהוספה ארוכה הנמצאת בכתבי יד עתו אינה תוספת „מרגינאלית,״ כמו שטוען בעל דקדוקי סופרים, אלא תלמוד קדום ואולי מקורי. רוזנטל מעיר: „,החוץ׳ הזה, שהובא כאילו בפנים, שוב אי אפשר להוציאו משם בלא לפגוע ולפצוע בגוף הנוסח״ („תולדות הנוסח,״ עמ׳ 22).
194 ראה לעיל סוג א׳, דוגמא 2.
195 ירושלמי פסחים פרק ד׳ הלכה ט, דף ל׳ ע״א.

מסתבר יותר שהוא השמיט לטובת הסגנון הקצר משום שבשורה הבאה מוזכרת כוונה.

2. המילים „מיחזי כיוהרא" חסרות בכה"י התימניים. לאמיתו של דבר מילים אלו חסרות גם בכתבי יד נוספים[188] ונראה שחסרון זה משקף את הגירסא הקדומה שקיבלו בתימן.

3. במקום הלשון הקצרה שבכ"י M6: „הכא לא מיחזי כיוהרא אמרי מלאכה הוא דלית ליה" בכה"י התימניים הגירסא מפותחת. כל המילים של M6 נמצאות בכה"י התימניים, חוץ מ„מיחזי כיוהרא" ו„פוק חזי." נראה שהוספה זו התחילה כפירוש (בגליון או בפנים) בנסיון להסביר למה יוהרא לא שייך במקרה של עבודה בתשעה באב. הפירוש בכה"י התימניים דומה להפליא לפירוש רש"י במסכת ברכות, שם הוא מפרש:

> אמרי אינשי עבידתא הוא דלית ליה – הרואה אותו שאינו עושה מלאכה אינו מבין שמחמת תשעה באב הוא בטל אלא אין לו מלאכה לעשות. פוק חזי כמה בטלני איכא בשוקא – אף בימי מלאכה.

ההוספה בכה"י התימניים מתאימה בדיוק לתוכן פירוש רש"י, אלא שהיא שואבת את הניסוח מן הסוגיא גופה, ומנסחת את הדברים בלשון הגמרא. כך למשל, רש"י אומר: „הרואה אותו שאינו עושה מלאכה" ובנוסח כה"י התימניים כתוב: „כי לא עביד מלאכה." ברש"י כתוב: „אינו מבין" – ואילו בכה"י: „לא אמרי אינשי." ברש"י כתוב: „שמחמת תשעה באב הוא בטל," ובכ"י: „האי דנקיט נפשיה ברבנן הוא."[189] ברש"י: „אלא אין לו מלאכה הוא," ובכה"י: „אלא אמרי האי דלא קא עביד מלאכה דלית ליה מלאכה הוא." ברש"י: „פוק חזי כמה בטלני איכא בשוקא," ובכה"י: „כמה בטלני איכא בשוקא" (TCOL). המסרן התימני היה בקי בניסוח הסגנון, ולכן במשך הזמן הפירוש הפך למה שנראה כמו גירסא, הכל על בסיס הטקסט המקובל והקצר שהגיע לתימן.

דוגמא 2 (נז ע"א)

הדוגמא האחרת של רוזנטל מופיעה במאמרו „תולדות הנוסח" בעמ' 27 תחת הכותרת: „חילופי-לשונות שאינם שווים בטעמם." נביא את גירסת כ"י TCOL וגירסת M6:

TCOL	*M6*
ולא מפני שעיני צרה	למה לי למימרא להו לא מפני שעיני צרה
הא קא יהיב ליה[190]	
הכי קאמ' להו וכי תאמרו האי דלא קא יהיב לן	כי היכי דלא לימרו
בתורת פיאה אשתמוטי הוא דקא משתמיט	דחויי קא מדחי לן.
סבר או בתורת פיאה הוה בעינא מיהב להו כל שתא.	
לא מפני שעיני צרה אלא שאמרו חכמ' אין נותנין פיאה לירק.	

188 כ"י V109 וקטע גניזה G188.

189 כלומר שהוא שם את עצמו בתוך קבוצת „רבנן," ומפסיק לעבוד מחמת האיסור של תשעה באב.

190 בכ"י TJTS „להו," וכך צ"ל.

נספח א׳

דוגמאות שהביא רוזנטל מפרק „מקום שנהגו״

בשתי הדוגמאות (היחידות) שרוזנטל מביא במאמרו „תולדות הנוסח״ מפרק „מקום שנהגו״ נראה, שלדעתו הן משקפות גירסא מקורית שונה, דהיינו „לישנא אחרינא״ אף על פי שמדובר בתוספת.

דוגמא 1 (נה ע״א)

הדוגמא הראשונה שהוא מביא היא מדף נה ע״א. נשוה כאן בין כה״י התימניים וכ״י M6:

TJTS	*M6*
דרבן שמעון בן גמליאל אדרבן שמעון בן	דרבן שמעון בן גמליאל אדרבן שמעון בן
גמליאל לא קשיא התם	גמליאל **נמי** לא קשיא התם **הוא דבעינן** כוונה
אנן סהדיה דלא מצי מכוין דעתיה	אנן סהדי דלא מצי מכוין דעתיה **מיחזי**
	כיוהרא
הכא כי לא עביד מלאכה	**אבל הכא לא מיחזי כיוהרא**
לא אמרי אינשי האי דנקיט נפשיה ברבנן הוא	
אלא אמרי האי דלא קא עביד מלאכה דלית	אמרי
ליה מלאכה הוא כמה בטלני	מלאכה הוא דלית ליה **פוק חזי** כמה בטלני
איקא בשוקא.	איכא בשוקא.

הדגשתי באותיות בולטות מה ששוה בשתי הנוסחאות. רוזנטל מכניס דוגמא זו תחת הכותרת „ויש גם תוספות והרחבות-לשון״ אך אינו מעיר יותר.[186] לדעתו דוגמה זו משמשת עוד ראיה לכך, שבמסורת הנוסח של כה״י התימניים נשתמרה „לישנא אחרינא״ של הטקסט. ואולם, נראה לי, שאין מדובר כאן בלשון קדום, השייך לפילוג הענפים, אלא בהוספה מאוחרת שבמשך הזמן עובדה והותאמה לטקסט. מקורו של ההבדל בין כה״י התימניים ושאר כה״י מתבטא בנסיון שנעשה על ידי כה״י התימניים להסביר יותר ולפשוט יותר. הדבר בולט במיוחד כאשר אנחנו מתבוננים במשותף בין הנוסחים. כל היסודות של הגירסא של כ״י M6 קיימים בנוסח התימני, אך כדי לפשוט את הלשון המסרן מוסיף ומשמיט כאחת,[187] הכל לטובת הסגנון היפה והמשופשף. נעבור על כל השינויים אחד אחד:

1. בכה״י התימניים חסרות המילים „הוא דבעינן כוונה.״ מילים אלו אינן הכרחיות להבנת העניין, כי ידוע שבקריאת שמע אנו עוסקים ובה יש צורך בכוונה. ומעניין שבכתב יד LON, במקום „התם הוא דבעינן כוונה״ (M6) כתוב „<...> תליא מלתא״ ברור שגירסא זו זהה לאמור בסוגיא המקבילה בבבלי ברכות יז ע״ב. אפשר איפוא, שהמסרן התימני הכיר את הסוגיא המקבילה והחליט להשמיט כדי לא להכריע בין הגירסאות הסותרות. אולם,

186 ראה רוזנטל, „תולדות הנוסח,״ עמ׳ 16.

187 רוזנטל לא העיר על כך שבדוגמא זו יש גם קיצור הלשון. פרט זה חשוב במיוחד בקשר לחסרון „מיחזי כיוהרא.״

למעשה הגירסא הרווחת כאן הוא „ומשנינן ליה." כן הוא בM95, OX, V134 וVEN. בקטע המקבילה במסכת מועד קטן יג ע"א-ע"ב רוב כה"י גורסים: „אמרינן ליה." כן הוא בכ"י לונודון 400, כ"י וטיקן 134, וקולומביה X893. שינוי זה מתאים לפילוג ענפים – מצד אחד: „אמרינן ליה," ובענף השני: „שנינן ליה." ולאחר מכן התפתחו שינויים על „שנינן ליה," כגון „משנינן ליה" ו„שנינו ליה." אם כן גירסת כה"י התימניים כאן היא שריד לגירסת הענפים שאחר כך הוגהה בשאר עדי הנוסח. אפשרות נוספת היא שכה"י התימניים תיקנו את הלשון כאן כדי להתאימה לסוגיא במועד קטן.

השינוי האחרון בקטע זה שחשוב לציין הוא בין „כדתניא" ו„והתניא."[179] שינוי זה לא נראה לי קשור כלל וכלל לענפים קדומים, אלא כדרכם, כה"י התימניים חרדים לסגנון והקשר. ברייתא זו משמשת לראיה, ולא לקושיא (כפי שמפרש רש"י כאן „והתניא בניחותא"). בכה"י התימניים הפכו איפוא את הפירוש לגירסא כמו במקומות רבים.

סיכום

הבאנו כאן את רוב רובן של הדוגמאות שבהן גירסת היסוד שבכה"י התימניים שונה מן הנציגים של הענפים. מספרן אינו רב כמו הפילוגים בין כ"י V125 וM61. זאת ועוד, כמעט בכל המקרים הגירסא בכה"י התימניים מפותחת ומובנת יותר מזו שבעדים האחרים. הראיתי שבכה"י התימניים יש נטיה לפרש ולשכלל את הביטוי המקורי; כך, למשל, בדוגמא 3, הביטוי המקורי „מהיכא דאיתנהו" שמופיע בסוגיא שלש פעמים, שונה והותאם כל פעם בכה"י התימניים כדי שישתלב בהקשר, ובדוגמא 12 המונח „והתניא" הוחלף ל„כדתניא" להתאים להקשר. כמו כן, קיימת נטיה לפרש מילים קשות: „ניסחני" > „ניסאני,"[180] ו„תרבא" > „חלב."[181] וכן ישנה נטיה לשנות את המונחים המקוריים למונחים מוכרים ונפוצים יותר; לדוגמא, „דוקא" > „לא אמרן אלא."[182] ישנה גם נטיה להגיה את התלמוד על פי מקורות חיצוניים, כגון תוספתא, לדוגמא „לא בנופו" > „לא בראשו,"[183] ו„במקום הטיט" > „מקום הטינה."[184]

כאשר אנו מתבוננים במכלול התופעות שבכה"י התימניים אין ספק שאופיים הכללי מתאים לנוסח מפותח. השוני בינם לבין שאר עדי הנוסח על פי רוב מתבטא בהוספות, שהן סימן לפעילות מאוחרת. בנוסף לכך, אפילו בשינויים בגוף התלמוד הנוסח בכה"י התימניים הוא על פי רוב הגירסא המפותחת ביותר. נוסח התלמוד התימני בכלל טעון בדיקה יסודית ומקיפה, וברור שהמחקר בשלב זה הוא בראשית דרכו. עד שלא נבדוק את כל כתבי-היד התימניים בכל המסכתות ונשוה ביניהם לבין שאר עדי הנוסח, ועד שלא נעמוד על המצב ההיסטורי ותרבותי בתימן במשך הדורות, לא תהיה אפשרות להסביר באופן יסודי את התופעה המיוחדת של כתבי-היד התלמודיים התימניים.[185] במאמר זה הצעתי דרך חדשה בהבנת התופעה של כה"י התימניים בפרק מקום שנהגו, ואם פתחתי כיוונים חדשים לפני הלומד באתי על שכרי.

179 גם במועד קטן בכל הגירסאות „והתניא."

180 דוגמא 4.

181 דוגמא 2.

182 דוגמא 6.

183 דוגמא 5.

184 דוגמא 10.

185 כיוון מחשבה מעניין לדעתי הוא שהנטיה בתימן למסור ולשנן את הטקסט בעל פה הוא שהשפיע על טיב כתבי היד התימניים.

גירסת כ״י M6 יחידאית היא, ונראה שיסודה בטעות, במיוחד שכ״י JTS גורס כאן „רב.״ ובכ״י V125 בגליון מוגה כמו כה״י התימניים, אבל רוב כה״י גורסים כאן „רב,״ כמו בגוף כ״י V125. באותו קטע של הגאון מן הגניזה הוא גורס ככה״י התימניים – „רב יוסף.״ שם כתוב: „ועל זאת פירקנו אמ׳ רב יוסף בגלילא שאנו.״ ייתכן שהגירסא „רב יוסף״ היה פילוג בין הענפים והרמז לכך היא גירסת כה״י התימניים והגליון של V125.

בהמשך דברי הגאון שם במקום רב ששת: „ופריק רב יוסף הא מני בית שמאי היא דתנן הלילה בית שמאי אוס׳ נמצאת משנה זו לבית שמאי ולאנשי גליל.״ וגם התוספת „הא מני״ וכו׳, שלא נמצאת באף כ״י חוץ מכה״י התימניים, נמצאת מילה במילה אצל הגאון. מכל מקום, הוספה זו היא גירסא משנית ולא משקפת פילוג הענפים.

דוגמא 12 (נה ע"ב)

TJTS	*M6*	*V125*
אמ׳ אביי סופה אתן	אמ׳ אביי לא קשיא כאן	אמ׳ אביי לא קשיא כאן
לארבעה עשר	בארבעה עשר כאן בחולו של	בארבעה עשר כאן בחולו
	מועד	שלמועד
רבא אמר לעולם בחולו	רבא אמ׳ הא והא בחולו של	רבא אמ׳ הא והא בחולו
שלמועד והכי קאמ׳ ואם	מועד והכי קאמ׳ אם	שלמועד והכי קא אמ׳ אם
נעשית חצר כרפת מוציאין	נעשת חצר כרפת מסלקין	נעשת חצר כרפת מוציאין
אותו לאשפה...	אותו לאישפה...	אתו לאישפה...
אמרינן ליה	ושנינו ליה לא קשיא	ושנית ליה לא קשיא
כן בארבעה עשר	כאן בארבעה עשר	כאן בארבעה עשר
כן בחולו שלמועד	כאן בחולו של מועד	כאן בחולו שלמועד
ואי בעית אימא אידי ואידי	ואיבעית אימא הא והא	ואיבעית אימא הא והא
בחולו שלמועד	בחולו של מועד ולא קשיא	בחולו שלמועד ולא קשיא
כן במאמינו כאן בשאינו מאמינו	כאן במאמינו כאן בשאינו מאמינו	כאן במאמינו וכאן בשאין מאמינו
כדתניא מביאין...	והתניא מביאין...	והא תניא מביאין...

לפנינו ארבעה הבדלים בין כה״י התימניים ושאר כתבי-היד. כמו בדוגמאות הקודמות חלק משינוים אלה נראים כהתפתחות מאוחרת, שאיננה שייכת לפעילות הענפים הקדומים. השינוי הראשון – „סופה אתן״ נראה שהועבר לכאן מן החלק הקודם של הסוגיא, שם נאמר (M6): „אמ׳ אביי סופא אתאן לחולו של מועד,״ ובכה״י התימניים שם: „אמ׳ אביי סופה אתן.״ זו היא דוגמא נוספת של פישוט הלשון, כדי שלשונו של אביי יהיה אחיד וכדי לקצר חזרו על אותו לשון מלמעלה.

השינוי במימרתו של רבא מהותי יותר. במקום „הא והא״ בשאר הנוסחים, בכה״י התימניים הגירסא היא: „לעולם.״ וגם בכ״י V109 כאן יש גירסא שונה: „רבא אמ׳ אידי ואידי בחולו של מועד,״ וכן הגירסא בכה״י התימניים בהמשך: „ואי בעית אימא אידי ואידי בחולו שלמועד.״ אבל בV109 שם: „הא והא״ כשאר הנוסחים. ייתכן ששני ענפי הנוסח ירשו גירסת ליתא: „רבא אמר בחולו של מועד״ וכו׳, בלי מילת קישור, וענף אחד הוסיף וגרס: „הא והא״ והשני „לעולם.״ לדעתי יש גם אפשרות שכבר לפני פילוג הענפים היתה הגירסא „רבא אמר הא והא״ וכו׳, ובענף אחד (או אפילו מאוחר יותר) שינו לביטוי הנפוץ יותר „לעולם.״

השינוי השלישי בקטע זה הוא בין „אמרינן ליה״ ל„ושנינו ליה״ או „ושנית ליה,״ אבל

ירושלמי מסכת חלה פרק א הלכה א, דף נז ע״ג

> ועוד מן הדא דתני המנכש בשלשה עשר ונתלש הקלח בידו הרי זה שותלו במקום הטינא אבל לא במקום הגריד. הרי יש כאן שלשה עשר וארבעה עשר וחמשה עשר ומקצת היום ככולו אמר ר׳ יוסי מילתיה דרבי אבינא מסייעא לי.

בלשון הברייתא כפי שהיא בתוספתא ובירושלמי, חסר השם ר׳ יהודה כנוסח כה״י התימניים בבבלי. גם הגירסא „הטינא" תואמת את גירסת כה״י התימניים. עם זאת חסר השינוי (שגם לא מצאנו אותו בר״ח או אצל הגאון) מ„שותלה" ל„זורעה." אבל בתוספתא כלאים יש לשון מאד דומה לתוספתא מנחות, ושם שנו:[175] „היתה שדהו זרועה חטין, ונמלך לזרעה שעורים לא יזרע עד שייפך. לא הפך, ימתין עד שתתליע. עד כמה היא מתלעת עד מקום ששהת שלשה ימים, במקום הטינא, אבל לא במקום הגריר. שמקצת היום ככולו." הרי לפנינו אותו סיום של התוספתא במנחות: „... במקום הטינא, אבל לא במקום הגריר שמקצת היום ככולו."[176] אך הפועל בתוספתא כלאים הוא „זרע." ייתכן שכה״י התימניים שאבו הלשון „זורעה" מתוספתא כלאים, אף על פי שהפועל „זורעה" לא מתאים להקשרנו כי הצמח כבר גדול. נראה ששינוי זה מאוחר. אבל לגבי השינויים האחרים קשה יותר. השינוי ל„טינא" הוא בגוף הטקסט ויש לנו שתי עדויות קדומות לגירסא זו. וברור שאין כאן פירוש של הר״ח אלא גירסא בספר התלמוד שלו.

לסיכום: אפשרות סבירה היא שכה״י התימניים בגירסאות „הטינה" וחסרון ר׳ יהודה מיצגים אחד מן הענפים שאחר כך הושלם והוגה.[177] אך אין נראה שגירסאות אלו מקוריות הן. אלא „טינה" היא גירסא יותר מפותחת שמסרני הענף שאבו מן התוספתא. וייתכן שגם השמיטו את השם ר׳ יהודה כדי להתאים את גירסתם לתוספתא. עם זאת, עדיין קיימת אפשרות נוספת שאין שינויים אלה משקפים פילוג לענפים, אלא התרחשו בשלהי תקופת הגאונים ולכן אין לנו שריד להם בכה״י האחרים.

דוגמא 11 (נה ע״א)

TJTS	M6	V125
אמר רב יוסף	אמ׳ ר׳ ירמיה	אמ׳ רב[178] [יוסף]
בגלילא שנו והאיכא לילה	בגלילא̆ שנו והא איכא לילה	בגליל שנו והא איכא לילה
אמ׳ רב ששת הא מני	אמ׳ ̆רב ששא	אמ׳ רב שישא
בית שמאי הוא דתנן הלילה	כבית שמאי	כבית שמי
בית שמאי אוסרין		

השינוי שלפנינו הוא המשך של הדוגמא הקודמת. למי יש לייחס את המימרא „בגליל שנו"?

175 מה׳ הגר״ש ליברמן, עמ׳ 206 שו׳ 43–46.

176 גם קרוב עד כדי כך שמעיר הגר״ש ליברמן בתכ״פ עמ׳ 606 לתוספתא כלאים: „שמקצת היום ככולו – אשגרה מתוספתא מנחות הנ״ל. וכאן צ״ל: מקצת היום ככולו" וכו׳.

177 עמדנו על כך ש„זורעה" הוא שינוי מאוחר, וכן הוספת המילה „שבולת" (שאגב, נמצאת גם בגליון של כ״י V125).

178 כך „רב" גם בJTS, V134, OX, M95, LON, G188. בV109 וVEN גורסים „רבא."

ב־M6 ו־V125: „לעולם לא תיפוך" ובכה"י התימניים: „לא תחליף." אלא שכאן יש לנו עדים נוספים לגירסא זו. בכ"י V109: „לעולם לא תחליף" וכו', וגירסא זו נראית כמשקפת פילוג בין ענפים. ייתכן שאביו של כ"י V125 גרס גם הוא „תחליף," אך הוגה כמו הענף השני. לגבי החסרון של „לעולם" בכה"י התימניים נראה שמדובר בהשמטה מאוחרת ומכוונת כדי לקצר הלשון. והוכחה טובה לאיחורה של גירסא מחוסרת זו היא חסרונה בדפוס וניציה. כמו בדוגמאות הקודמות, הגירסא „לא תחליף" נראית משנית לגירסת „לא תיפוך," ואפילו אם יש לראות גירסא זו כמשקפת חילוף בין ענפים, גירסא יותר מפותחת היא.

דוגמא 10 (נה ע"א)

TJTS	M6	V125
והתנן[173]	והתניא ר' יהודה או'	והתניא ר' יהודה אומ'
היה מנכש בשלשה עשר	המנכש בשלשה עשר	המנכש בשלשה עשר
ונעקרה שבולת בידו	ונעקרה בידו	ונעקרה [שובולת] בידו
זורעה במקום הטינה	שותלה במקום הטיט	שותלה במקום הטיט
ואין זורעה במקום הגריד.	ואין שותלה במקום הגריר.	ואין שותלה במקום הגריד.

שינויים בולטים יש לנו כאן, הכוללים כמעט כל תחומי שינויי הגירסות האפשריים – השמטה, הוספה, ושינוי בגוף הטקסט. השמטה כיצד? בכה"י התימניים חסר השם ר' יהודה. הוספה – בכה"י התימניים נוסף: „שבולת." שינוים בגוף הטקסט – בכה"י התימניים הגירסא: „זורעה" במקום „שותלה," ו„הטינה" במקום „הטיט." קדמותה של גירסת כה"י התימניים מקבלת חיזוק מפירוש רבנו חננאל ומתשובת גאון מן הגניזה. רבנו חננאל לא גורס לגמרי ככתבי-היד התימניים, אבל גירסתו כוללת ההוספה ו„הטינא" במקום „הטיט." הוא כותב: „והתניא ר' יהודה אומר המנכש בשלשה עשר ונעקרה שבולת בידו שותלה במקום הטינא ואין שותלה במקום הגדר." מתשובת הגאון נראה שהוא גרס כמו רבנו חננאל באשר להוספה „שיבולת" ולשינוי „טינא."[174] ולא עוד אלא שנראה שהוא גם לא גרס „ר' יהודה" בראש הברייתא שכן אעפ"י שאין הוא מצטט את לשון הברייתא במפורש, מכל מקום הוא חוזר על עניינה לפי ההבנה בסוגיא, וכותב „אלא היה אומ' היה מְנכש בי"ד ונעקרה בידו שיבולת... ובגליל שנו היה מנכש בי"ג מפני שאסור... אבל אנשי גליל שאינן כבית שמאי יש להן לשנות היה מנכש לילי י"ד," בכל הפעמים בלי איזכור השם „ר' יהודה." נראה שהמקור העיקרי לשוני שבכה"י התימניים הוא התוספתא ממסכת מנחות וגירסא דומה גם בירושלמי חלה:

תוספתא מנחות י:לא, מהד' צוקרמנדל, עמ' 529

> היה מנכיש בשלשה עשר ונעקרה בידו שותלה במקום הטינא אבל לא במקום הגריד שמקצת היום ככולו.

173 בTCOL: „והא תניא הוה מנכש" וכו'.

174 ראה: L. Ginzberg, *Geonica* (2 vols.; New York: The Jewish Theological Seminary of America, 1909) 2:21, שם כתוב: „אפילו בי"ג בניסן אם נעקרה שיבולת בידי המנכש חייב ור' יהוד' לשותל... הטינה כי יש לפניו ג' ימים עד שעת התרת קצירת העומר ואיפשר..." הגאון מוסיף „שיבולת" וגורס „הטינה" כמו הר"ח.

כאן. וייתכן שבמקור ענף אחד השלים וענף אחד לא, וכה״י התימניים שומרים על הגירסא של הענף שלא השלים. לשיטת זו צריכים אנו לומר שהמקור בבבלי היה דומה לנוסח של המכילתא דרשב״י, וענף אחד הוסיף וענף אחד לא, ולאחר מכן תיקנו כל אחד כדרכו את החסר, שהביא לשינויים רבים.

אבל גם הסבר כזה קצת קשה: איך ייתכן שגירסת היסוד היתה חסרה ובלתי מובנת? אפשרות רחוקה היא שM6 וV125 כן מיצגים את הענפים הקדומים, וגירסת הליתא היא כתוצאה מן הצנזורה. כלומר, גירסת כה״י התימניים ודעימיה גירסא מצונזרת היא, ולאחר מכן כל גירסא השלימה כדרכה. אפשר לומר בודאות שקטע זה היה בעייתי מבחינת הצנזורה שהרי בדפוסים ישנם שינויים כתוצאה מן הצנזורה. בדפוס אמשטרדם תפ״ו הגירסא: „ומלכות בית דוד מתי תחזור ומלכות פרס מתי תפול.״[170] הדבר הקשה לפי שיטה זו הוא גירסת המכילתא דרשב״י, שנראית קדומה.[171]

דוגמא 8 (נד ע״ב)

TCOL	*M6*	*V125*
והא אנן תנן אוכלין ושותין מבעוד יום לאפוקי מאי לאו לאפוקי בין השמשות לא לאפוקי משחשיכה.	והא תנן אוכלין ושותין מבעוד יום למעוטי מאי לאו למעוטי בין השמשות לא למעוטי משחשכה.	והא אנן תנן אוכלין ושותין מבעוד יום למעוטי מאי לאו למעוטי בין השמשות שלו לא למעוטי משחשיכה.

כאן יש דוגמא נוספת של גירסת יסוד כאשר כה״י התימניים נראים כענף קדום ואין עוד עדות לגירסתם בכ״י או בראשונים. לפנינו קטע ששייך לרובד של עורך הסוגיא שבו נפוץ יותר השימוש בביטוי „למעוטי מאי״ וכו׳ מאשר „לאפוקי מאי״ וכו׳. עובדה זו מחזקת את האפשרות שכה״י התימניים שומרים כאן על גירסא קדומה (הפחות נפוצה) שהיתה בענפים אבל עכשיו כבר אין לה זכר בM6 וV125, מפני שהסופרים נטו לגירסא הרווחת.

דוגמא 9 (נה ע״א)

TJTS	*M6*	*V125*
אמ׳ ר׳ יוחנן מחלפת השיטה רב ששא בריה דרבי אידא[172] אמר לא תחלוף דרבנן אדרבנן לא קשיא...	אמ׳ ר׳ יוחנן מוחלפת השיטה רב שישא בריה דרב אידי אמ׳ לעולם לא תיפוך דרבנן אדרבנן לא קשיא...	אמ׳ ר׳ יוחנן מחולפת השיטה רב שישא בריה דרב אידי אמ׳ לעולם לא תפוך דרבנן אדרבנן לא קשיא...

שבהם ענף אחד אינו מוסיף, והענף השני מוסיף, ואף דוגמאות מעניינות יותר שבהן כל ענף מוסיף כדרכו.

170 בעל דקדוקי סופרים, עמ׳ 158, אות י, כותב על נוסח זה: „ונשתנה בד׳ בסיליאה מן הצענזור.״

171 המהרש״ל מציין כאן למקבילה בבראשית רבה (סה:ב, מה׳ תיאדור-אלבק עמ׳ 722-723) שבה חסרות המילים „מלכות בית דוד״: „תני שבעה דברים מכוסים מבני אדם ואילו הן יום המיתה ויום הנחמה ועומק הדין ואין אדם יודע במה משתכר ואינו יודע מה בלבו שלחבירו ואין יודע מה בעוברה שלאשה ומלכות הרשעה אימתי נופלת.״ לא נראה לי שיש קשר בין בראשית רבה וכ״י OX (שגם חסר בו „מלכות בית דוד״), שהרי שם חסרות מילים אלה בגלל השמטה הדומות, וראה דקדוקי סוקרים.

172 צ״ל „דרב אידי,״ כבTCOL.

TJTS	*M6*	*V125*
	אימתי ת[חזור][163]	מתי תחזור
ומלכות החייבת	ומלכות חייבת	ומלכות חייבת
	אימתי תפול	מתי תכלה

כאן הגירסא מתפלגת לשלוש נוסחאות עיקריות. האחת – גירסת ליתא של כה״י התימניים, ומצטרף אליה קטע גניזה G188[164] (כתב ספרדי מרובע); השניה – גירסת M6 (ואולי כאן הנציג הטוב יותר הוא JTS): „מתי תקום... מתי תפול״ וכן הוא בLON; והשלישית – גירסת V125: „מתי תחזור... מתי תכלה״ וכן הוא בM95. בשאר כה״י יש תערובת „תחזור... תפול״ (כן הוא בSAS, VEN, וV1341), „מתי תבא... מתי תיכלה״ (בV109 ובפירוש ר״ח). הדברים אף יותר מורכבים לאחר עיון במדרשי ההלכה כאן:

מכילתא דר״י מסכתא דויסע פרשה ה[165]	מכילתא דרשב״י בשלח טז:לא-לב[166]
שבעה דברים מכוסין מבני אדם ואלו הן: יום המיתה, ויום הנחמה, ועומק הדין, ואין אדם יודע במה משתכר, ואין אדם יודע מה בלבו של חבירו ומלכות בית דוד אימתי תחזור למקומה ומלכות זו חייבת אימתי תעקור.	שבעה דברים מכוסין מבני אדם ואילו הן: יום מיתה, ויום נחמה, ועמק הדין, ואין אדם יודע במה משתכר, ואין אדם יודע מה בלבו שלחברו ומלכות בית דויד ומלכות חייבת.

המקורות זהים חוץ מן הענין של מלכות בית דוד ומלכות חייבת.[167] ובאמת גירסת המכילתא דרשב״י קשה וסתומה: „מלכות בית דוד״ ו„מלכות חייבת״ זקוקים לפועל, ואינם כיום המיתה למשל שהם יכולים לעמוד לבד כ„דברים מכוסין.״ מה מכוסה לגבי מלכות בית דוד? לכן נראה שגירסת המכילתא דר״י חיונית להבנת הענין. פילוג M6 וV125 רק מחריף את השאלה היות והם לא מסכימים בהשלמת המשפט. ענף M6 (JTS) משתמש בפועל של „קום״ ו„נפל״ כאשר V125 משתמש ב„חזר״ ו„כלה,״ עובדה הנותנת רושם ששני הענפים ירשו גירסת ליתא והשלימו זה כדרכו וזה כדרכו.[168] אפשרות[169] זו נראית גם בגלל ריבוי השינויים בין כה״י

163 בצילום שבידי אי-אפשר לראות אם תוקן המקור או לא, ובעל דקדוקי סופרים לא העיר על דבר זה. אבל שמא היה כתוב „תקום״ והוגה „תחזור״ כענף V125.

164 בספר הלכות גדולות דפוס ויניציה ש״ח הלכות סופרים, הגירסא היא: „ואין יודע במה משתכר ואין אדם יודע מה שבלבו של חבירו מלכות בית דוד ומלכות חייבת״ (מה׳ מכון ירושלים, עמ׳ תרפג), כמסורת כה״י התימניים. אבל על פי מה׳ הילדסהיימר, כל הקטע הזה חסר בכ״י של הלכות גדולות, וייתכן שאין זו גירסא של הבה״ג אלא מעשה הצנזורה.

165 מה׳ הורוביץ-רבין (ירושלים: ספרי ואהרמן, תש״ל) עמ׳ 171.

166 מה׳ אפשטיין-מלמד (מהדורה שניה; ירושלים: הוצאת ישיבת שערי רחמים ובית הלל) עמ׳ 115.

167 רק בכה״י התימניים, בכ״י V109 ובדפוס ונציה מוסף: „ואילו הן,״ וברור שזה לא מקורי כאן.

168 ראה פרידמן, „לאילן היוחסין,״ עמ׳ 114. שם מציין פרידמן את הפילוג בין: „הי רבי מאיר אילימא רבי מאיר דצבע״ (ענף גניזה-המבורג), ובענף פמ: „ר׳ מאיר דצמר.״ וגם בהמשך גה גורס: „הא ר׳ מאיר דמגבית פורים,״ וענף פמ: „ר׳ מאיר דפורים.״ ובמקור השלישי כל כה״י זהים ולא מופיע כינוי: „אלא הא ר׳ מאיר דתניא... הנותן דינר לעני.״ אך פרידמן מוסיף: „... שוה כאן בכל תשעת הנסחים הקיימים לקטע זה. אף-על-פי-כן, אין הדרך חסומה בפני הכנסת הכינויים, כדי להשוות את הסגנון ולייפותו, ומצינו: „אלא ר״מ דחלוק הנותן דינר לעני ליקח בו חלוק... (תחילת הדיבור בשיטה מקובצת עם דברי הראב״ד)״ („לאילן-היוחסין,״ עמ׳ 117).

169 עם זאת ברור גם שאין ליחס כל תוספת לזמן מאוחר, שהרי בבבא מציעא מצא פרידמן הרבה מקרים

בדוגמא זו, השינוי שבין „לא אמרן אלא" לבין „דוקא" נראה לכאורה מתאים ואופייני לפילוג שבין הענפים. ואולם, אין לנו עדות נוספת לגירסא הזו חוץ מכה"י התימניים.[161] אפשר להציע שני הסברים לשינוי בין „דוקא" ל„לא אמרן אלא." האפשרות הראשונה היא שחילוף גירסא זה משקף פילוג לענפים ו„לא אמרן אלא" הוא שריד לגירסא של אחד הענפים,[162] והסבר לחסרונו בנציג של הענף הוא שהנציג כבר מוגה כהענף השני. המגיה של הענף הוציא „דוקא" מפני שרב פפא אינו משתמש בביטוי הזה בשום מקום אחר בתלמוד. והמונח „לא אמרן אלא" הוא ביטוי של צימצום שנפוץ מאד בתלמוד בבלי וגם השימוש בו נפוץ אצל רב פפא עצמו. וזה מתאים למגמה הרגילה של ענף פעיל לאחד את המונחים של התלמוד. אך אפשרות זו קצת קשה משום שלא מצאנו עוד עד נוסח לגירסא זו. לכן נראית לי סבירה יותר האפשרות השניה, לאמור: שגם כאן מדובר בגירסא מישנית וייתכן שהיא שייכת לתקופת הגאונים. והמגיה פעל לאחד הלשון והמונחים אבל המחשבה הכוללני שיבש במקצת ההקשר שבו דברי רב פפא נמצאים שהרי לא בצימצום מדובר אלא בדיוק ומתאים הלשון „דוקא" יותר מ„לא אמרן אלא."

כדאי להוסיף כמה מילים על הפירוש שהוסף בכה"י התימניים. הפירוש מציע כנראה אפשרות נוספת שאפילו אם יחשבו שהוא מקדיש החטים, היות ובקדושת דמים עסיקינן אין זו בעיא, משום שלאחר מכן יש לו אפשרות לפדות. לא מצאתי פירוש זה במקום אחר, אך נראה לי שהוא תגובה לפירוש רש"י. בסוף ד"ה „בשר לא" מוסיף רש"י: „ולא אמרינן מיחזי כמאן דאמר למוכרן ולקנות פסח בדמיהן." כוונתו של רש"י היא שהרואים אותו אומר „חטים אלו לפסח" בודאי לא יחשבו שכוונתו למכור אותם חטים לקנות פסח, אלא יחשבו שהוא שומר עליהם לצורך הפסח. פרשן תימני הגיב והוסיף שאפילו אם יחשבו כך אין מחשבה זו מהוה בעיא, משום שידוע שאפשר לפדות את החטים.

דוגמא 7 (נד ע"ב)

TJTS	*M6*	*V125*
תנו רבנן שבעה דברים מכוסין	תנו רבנן שבעה דברים מכוסין	תנו רבנן שבעה דברים מכוסים
מבני אדם ואלו הן	מבני אדם	מבני אדם
יום המיתה ויום הנחמה	יום המיתה ויום הנחמה	יום מיתה ויום נחמה
ועמק הדין ואין אדם יודיע	ועומק הדין ואין אדם יודע	ועומק הדין ואין אדם יודע
כמה משתכר	במה משתכר	במה משתכר
ואין אדם יודיע (ב)מה בליבו	ואין אדם יודע מה בלבו	ואין אדם יודע מה בלבו
שלחבירו ומלכות בית דויד	של חברו ומלכות בית דוד	שלחבירו ומלכות בית דויד

המשך בעמוד הבא

161 דוגמא זו דומה לדוגמא המובאת אצל פרידמן, „לאילן היוחסין," עמ' 118, בין ענף גה שגורס: „אמר רב פפא לא משכחת לה אלא," וענף פמ שגורס: „אמר רב פפא אי אתה מוצא אלא." גם שם רב פפא מצמצם ברייתא, וגם כאן לכאורה רב פפא עוסק בצמצום של דברי רב, לומר שהחשש שלו קיים רק כאשר מדובר בבשר אבל בחטים לא. אבל לאמיתו של דבר הצימצום הזה כבר קיים בדברי רב עצמו, כי הרי הוא אמר „בשר" ולא דברים אחרים. בדברי רב פפא יש איפוא יותר דיוק מאשר צימצום, וכוונתו לומר שלשון של רב דוקא הוא. לאור זה נראה שהלשון המקורי כאן הוא „דוקא." ונראה שאלו הן מדברי רב פפא עצמו. ואין כאן אב גירסא חסרה („אמר רב פפא בשר אבל חטי לא") שהושלמה על ידי כל ענף כדרכו (אפשרות זו פרידמן מעלה בדוגמא מבבא מציעא).

162 אי אפשר לומר איזו, כי כאמור, בפילוגים בין הענפים, כה"י התימניים גורסים (לערך) מחצית מן המקרים כ-V125 ובמחצית השניה כ-M6.

מתוקין אלא טעם אכילה בלבד" וכו׳. הפירוש הזה זהה כמעט לפירוש שבגליון כ"י TJTS!

דוגמא 5 (נג ע"א)

TJTS	M6	V125
ר׳ אליעזר בן יעקב אומ׳ עד	ר׳ אליעזר בן יעקב או׳ עד	ר׳ אליעזר בן יעקב אומ׳ עד
שיכלה האחרון שבגש חלב	שיכלה אחרון שבגוש חלב	שיכלה אחרון שלג[ו]ש חלב
כדי שיוצא עני	כדי שיהא עני יוצא	עד שיצא מוציא[157] עני
ואינו מוצא לא בראשו ולא	ואינו מוציא לא בנופו ולא	ואינו מוצא לא בנופו ולא
בעיקרו רובע אוכלין בתאנים	בעיקרו רובע אוכלין	בעיקרו רובע אוכלין
עד שיכלו פגי	בגרוגרות עד שיכלו פגי	בגרוגרות עד שיכלו פגי
בית יני.	ביתואני.	בית ווני ואהיני דטובניא.

נוסח כה"י התימניים שונה בשלש נקודות מן הגירסא הרווחת.[158] השינוי הראשון הוא: „כדי שיוצא עני" במקום „כדי שיהא עני יוצא." נראה לי ששינוי זה הוא קיצור הלשון הנמצא לעתים קרובות בכה"י התימניים ואינו ביטוי לענפים. השינויים האחרים הם: „בראשו" במקום „בנופו" ו„בתאנים" במקום „בגרוגרות," ולמרות שהם מורכבים מעט יותר לא נראה לי שיסודם בפילוג הענפים אלא בהגהה מן התוספתא. בתוספתא המקבילה לברייתא זו בבבלי שנו: „ר׳ ליעזר בן יעקב או׳ אף של גוש חלב, כדי שיהא עני יוצא ולא יהא מביא רובע, בין מראשו בין מתחתיו."[159] ולעיל מינה: „אוכלין בתאנים עד שיכלה פגי בית וני."[160] נראה איפוא שלפנינו עדות להגהה בבבלי על-פי התוספתא. זו הסיבה שהמגיה לא משנה את המילה „עיקרו" ל„תחתיו," מפני שאי אפשר לשמור על סגנון של הברייתא בבבלי „לא ב... ולא ב..." אך ניתן להחליף „נופו" ב„ראשו" ולשמר את הסגנון, כשם שבקלות אפשר להחליף את המילה הפחות נפוצה „גרוגרות," ב„תאנים."

דוגמא 6 (נג ע"א)

TJTS	M6	V125
אמ׳ רב פפא	אמ׳ רב פפא	אמ׳ רב פפא
לא אמרן אלא בשר אבל חטי	דוקא בשר אבל חיטי	דוקא בשר אבל חיטי
לא	לא	כי
מאי חטי דפסחא		
דמנטרן לפסח קאמ׳	דמינטרא לפסח קאמ׳.	מינטרא לפסחא קא אמ׳.
או נמי אמרי מאי חטי דפסחא		
דקאמר דאקדשינהי למזבן בהי		
פסחא כיון דקדושת דמין היא		
מימר אמרי פרקינהי		

157 נראה שיש נקודות על המילה „מוציא" כסימן למחיקה.

158 המילים בכ"י V125 „עד שיצא מוציא" אינן מובנות, ונראה שחל בהן שיבוש.

159 תוספתא, שביעית ז:טו (מהדורת הגר"ש ליברמן [ירושלים: בית המדרש לרבנים שבאמריקה, תשנ"ג] עמ׳ 198).

160 שם, ז:יד (עמ׳ 197).

דוגמא 4 (נג ע״א)

TJTS	M6	V125
אלא ר׳ אילא כי קץ דניסאני [פי׳ פירי שלדקל וכשהן קטנים נאכלין ויש בהן טעם תמרים שאין בהן אלא טעם אכילה בלבד]	אלא ר׳ אילא בדניסחני	אלא ר׳ אילעא בדנסחני [פי׳ <...> ניסן]
הוא דקץ	קץ	קץ

כה״י התימניים גורסים כאן „דניסאני״ ואילו בשאר עדי הנוסח הגירסא היא „בדנסחני״ בחי״ת. בנוסף ישנו פירוש ארוך בגליון כ״י TJTS ובפנים כ״י TCOL (בסימן פירוש). הגירסא „דניסאני״ מתועדת בספר הלכות גדולות: „כפניות דנסאני דקרי להון כופרי מברכין עלייהו בורא פרי העץ״ וכו׳.[150] ואולם גירסא זו היא רק לפי כ״י ר (וטיקן 304 ו1361) של הלכות גדולות, ואילו שאר כה״י של ה״ג גורסים: „דנסחני״.[151] הילדסהיימר קובע את הפנים, בשונה מן הרגיל, שלא על פי כ״י מ (מילאנו), כי הוא משוכנע ש„דנסחני״ הוא נוסח משובש. ונראה שחלק מן הסיבה לכך הוא שבספר הערוך, בערך נסן, הוא גורס בהלכות גדולות: „כפניות דניסני״.[152] ואף על פי כן אין נראה להעדיף כאן את נוסח ר על פני נוסח כל כתבי-היד האחרים.[153] המילה „בדניסחני״ מופיעה גם בבבלי עירובין (כח ע״ב), שם כתוב: „התם בדניסחני... לעולם לאו בניסחני״ וכו׳ (דפוס, וכן הוא שם בכ״י מינכן ואקספורד).[154] בסוגייתנו המאירי מביא את שתי הגירסאות וכותב: „ואם הם כפניות שאין מטבעם להתבשל לעולם, והן הקרויות נסחאני או ניסאני, מצד שאדם רגיל לגדרם בניסן מותר, שהרי אין כאן הפסד״.[155] נראה שהגירסא המקורית כאן היא הגירסא הקשה „דנסחני״ בחי״ת, שם בוטני שגזרונו אינו ברור, והגירסא „ניסאני״ הוא פירוש ופישוט על פי שם החודש. התפתחות זו איננה שייכת לפילוג הענפים שהרי נציגי הענפים ושאר עדי הנוסח (חוץ מכה״י התימניים) גורסים את החי״ת. נראה שהמדובר כאן בגירסא משנית, קרוב לודאי מתקופת הגאונים שנכנס לכה״י התימניים דרך ספר הערוך.

באשר לפירוש הארוך בכה״י התימניים, אין ספק שהוא נוסף על פי ספר הערוך. בהמשך ערך נסן, כתוב: „ר׳ אילא קץ כפנייתא דשביעתא, ואסקינן ר׳ אילא בדניסני קץ,... פ״א: כפנייתא הם פרי של דקל זכר[156] וכשהן קטנים נאכלין ויש בהן טעם תמרים אבל לא כתמרים שהן

150 ראה: הלכות גדולות, הלכות ברכות הפירות (מה׳ ע׳ הילדסהיימר; ירושלים: הוצאת מקיצי נרדמים, תשל״ב, כרך א׳, עמ׳ 98).

151 דהיינו כתבי-היד מ (מילאנו 14), ב (וטיקן 142), ודפוס ראשון.

152 ערוך השלם, חלק ה׳, עמ׳ 354.

153 בהערה 60 שם כותב הילדסהיימר: „משום מה נשתבש בת׳ [= תלמוד בבלי] ,נסאני׳ ל,נסחני׳ ולנוסחה משובשת זו הותאמה הגרסה המקורית שבפירושי ר״ח ורש״י ובה״ג חוץ מבנוסח ר.״ טענה זו תמוהה, כי בכל כה״י של הבה״ג הגירסא היא „בנסחני.״ יתר על כן קל להבין למה מגיה היה משנה מ„נסחני״ ל„נסאני,״ אבל ההיפך קשה להבין. לכן נראה לי שהמקור בהלכות גדולות הוא „בנסחני,״ ו„נסאני״ הוא שינוי שנעשה כדי להתאים לפירוש המקובל.

154 בעל דקדוקי סוקרים כותב שם על גירסת בדנסחני: „וכ״ה בכ״י א״פ ובבה״ג שם ובפי׳ תלמיד הריטב״א. ובד״ש (= דפוס שאלוניקי) התם בדניסני בגמ׳ וברש״י וכ״ה בערוך ערך נסן״ וכו׳.

155 מאירי, עמ׳ קצ.

156 בהערה 8 שם כתוב: „בכ״י ה״ב לי״ וכן המילה „זכר״ ליתא בכ״י התימני.

זו חלה אומנם בשלב קדום יחסי, אבל אין זה ענין של הענפים הקדומים, אלא שוב דוגמא של גירסא משנית.

דוגמא 3 (נב ע"א)

TJTS	*M6*	*V125*
ממקום שלא כלו למקום שלא כלו ושמע לו שכלו במקומו חייב לבער	ממקום שלא כלו למקום שלא כלו ושמע שכלו במקומן חיב לבער	ממקום שלא כלו למקום שלא כלו ושמע שכלו במקומו חייב לבער
ר׳ יהודה אומ׳ צא והבא לך אף אתה דלהיכא דאמטינהו הא לא כלו להו...	ר׳ יהודה או׳ צא והבא לך אף אתה דבשעה דאיתינהו הא לא כלו להו...	ר׳ יהודה אומ׳ צא והבא לך אף אתה מהיכא דאיתנהו והא כלו...
אלא איפוך אימא אינו חייב לבער ר׳ יהודה אמ׳ צא והבא לך אף אתה והשתה מיהא הא ליכא	אלא איפוך אינו חיב לבער אמ׳ ר׳ יהודה צא והבא לך אף אתה מהיכא דאייתינהו הא (לא) כלו להו	אלא איפוך אינו חייב לבער ר׳ יהודה אומ׳ צא והבא לך אף אתה מהיכא דאיתנהו והא כלו
...	...	...
ר׳ יהודה אומ׳ צא והבא לך אף אתה והיכא דאמטינהו הא ליכא	ר׳ יהודה או׳ צא והבא לך אף אתה [מהיכא דאיתינהו והא כלו להו]	ר׳ יהודה אומ׳ צא והבא לך אף אתה מהיכא דאיתנהו והא כלו

בדוגמא זו משפט הסבר של בעל הסוגיא „מהיכא דאייתינהו” וכו׳ חוזר על עצמו שלש פעמים בקטע קצר כדי לפרש את המובן החדש של דברי ר׳ יהודה: „צא והבא לך אף אתה” (כדי להקל על הקורא נכנה אותם מקרים א׳ ב׳ וג׳). בכ"י M6 מצאנו בכל שלושת המקרים את הפועל „אייתינהו” (בפעם השלישית בגיליון), ומשמעות הביטוי „מהיכא דאייתינהו והא כלו” הוא „מהיכן שהבאת אותם והרי כלו.” אבל בוטיקן 125 בכל שלושת המקרים מצאנו במקום „אייתינהו” את המילה „איתנהו,” כלומר: ישנם, והביטוי מוקשה במקצת, שהרי משמעו המילולי הוא „מהיכן שישנם והרי כלו,” לכאורה תרתי דסתרי. בעדים אחרים מצאנו עירבוב בין שתי הלשונות. בכה"י התימניים, הפועל המשמש במקרים א׳ וג׳ הוא „דאמטינהו,” מילה נרדפת ל„דאייתינהו,” ובמקרה השני הפועל הושמט לחלוטין, ובמקום משפט ההסבר המלא מצאנו רק „והשתה מיהא הא ליכא,” שהוא כנראה פישוט הלשון המתבסס על פירוש רש"י (ד"ה „והכי קאמר”): „ור׳ יהודה מחמיר דאמרינן ליה צא והבא לך אף אתה מהיכא דאייתינהו השתא והא כלו להו.”

נראה שנעשה מאמץ להימנע מן השימוש בפועל „אייתינהו,” שניתן בנקל להחליפה ב„איתנהו,” כפי שאכן קרה בעדים רבים. המרת „אייתינהו” ב„אמטינהו” היא חלק מתופעה כוללת יותר: מצאנו נטיה של כה"י התימניים להחליף פעלים כדי להקל על ההבנה: בדף נא ע"א בכל הנוסחים „קורדקסין נמי דילמא משתלפי ואתי לאיתויינהו ארבע אמות ברשות הרבים,” ואילו בכ"י TJTS: „קרודקיסין נמי דלמא משתמיט ואתי ל<...>[148] ברשות הרבים.” בדף נז ע"א כל כה"י גורסים: „למה לי׳ למימרא להו לא מפני שעיני צרה כי היכי דלא לימרו דוחיי קא מדחי לן,” ובכ"י TJTS שינוי דרסטי: „ולא מפני שעיני צרה, הא קא יהיב להו! הכי קאמ׳ להו וכי תאמרו האי דלא קא יהיב לן בתורת פיאה אשתמוטי הוא דקא משתמיט” וכו׳.[149]

148 בכ"י TCOL: „דלמא אשתמיטו ואתי לאיתויה ארבע אמות ברשות הרבים.”

149 ראה הדיון שלי בקטע זה להלן בנספח א׳.

TJTS	*M6*	*V125*
כסייה מניהו אתו אמרו ליה לאבוה[144] אמ׳ להו שוינכו כי כותאיי	כסינהו אתו אמרו ליה לאביי אמ׳ להו שוינכו ככותאי	כסייה אתו אמרו ליה לאביי [אמ׳ להו] שוינכו כותאי

לפנינו שני שינויים שטיבם שונה זה מזה. השינוי הראשון הוא גירסא של תוספת ובוודאי הגירסא המקורית היא „אכל דאייתרא," כV125. כדי לפרש מילים סתומות אלו, הענף השני (M6) הוסיף את המילה „תרבא דאיתרא." במקרה זה הגירסא בכה״י התימניים מיצגת התפתחות נוספת, שהרי המילה „תרבא" מתורגמת לעברית, ואין כל ספק לגבי פירושה. סיוע לכך אנו מקבלים מן העיון בערוך ורבנו חננאל. בערוך בערך „יתר" כתוב: „פי׳ קיבה של בהמה עגולה כמין קשת ומחובר בה חלב משני צדדיה, ... וחלב שעל צד זה של קיבה שהוא על היתר אנחנו אוסרין וכהנים נהגו בו היתר." נראה מערך תרב שהערוך גרס כמו M6, אבל הוא מתרגם את המילה תרבא לעברית. גם רבנו חננאל גרס כנראה „תרבא," וגם הוא תרגם, אבל במקום ל„חלב" הוא מעתיקו ל„שומן": „כי אתא רבה בר בר חנה בבבל אכל השומן דאייתרא" וכו׳. ייתכן שכה״י התימניים מושפעים כאן מן הערוך כמו במקרים אחרים שראינו. אבל נראית יותר סבירה האפשרות, שנשתמרה בהם גירסא קדומה יותר, משום שהיא מופיעה גם בקטע גניזה G84 ובספר חלופי מנהגים מתקופת הגאונים.[145] עם זאת אפילו אם הגירסא היא קדומה יחסית היא לא קשורה לענפים והיא נראית משנית לגירסת „תרבא."[146]

הגירסא היחידאית השניה („אמרו ליה לאבוה") מתועדת אצל כמה ראשונים (הרי״ף, פסקי רי״ד, וחידושי רבנו דוד). אבל הקירבה הגראפית בין „אביי" ו„אבוה," מראה על אפשרות של טעות, ונראה שהמקור הוא „אביי." אפשרות זו מקבלת חיזוק בשל כמה סיבות: א. קשה כאן הדקדוק – כתוב ששניהם דיברו („אתו אמרו"), אם כן למה כתוב „אבוה" צריך לומר „אבוהון," וכנראה הוא הגורם לגרסא של פסקי רי״ד „אמרו ליה לאבוהון." ונראה שגם הוא הגורם לגירסת הר״ן על הרי״ף לפנינו „אמר אבוה דשמואל" (לא אביהם). ואי אפשר שמדובר בשמואל האמורא של דור הראשון כי כולם אמוראים של הדור הרביעי.[147] ב. אפילו אם נגיה קלות ונגרוס: „אבוהון," ברור שאין רב אויא ורבה בר בר חנה אחים. ג. הגירסא „אביי" מתועדת בכל יתר כה״י ואביי הוא אכן אמורא של דור הרביעי. ד. הלשון „אמרו ליה לאבוה" מוכרת לנו ממסכת מגילה (כד ע״ב): „אתא אמר ליה לאבוה." אם כן נראה שמדובר כאן בחילוף של לשונות שיש ביניהן דמיון גרפי, בהשפעת דברי התלמוד ממקום אחר. התפתחות

144 כל שאר כה״י גורסים „לאביי," אבל ברי״ף: „ואמרו ליה לאבוה"; בפסקי רי״ד: „אמרו ליה לאבוהון"; בחידושי רבנו דוד: „אמ׳ להו אבוהון שוינכו כותאי"; ובר״ן על הרי״ף: „אמר אבוה דשמואל."

145 „בני ארץ ישראל מתירין חלב הקיבה דאייתרא; בני בבל אוסרין אותו" (אוצר חלוף מנהגים בין בני ארץ ישראל ובין בני בבל, מהד׳ לוין [ירושלים: הוצאת מוסד הרב קוק שעל יד המזרחי העולמי, תש״ב] עמ׳ 105, חילוף נב).

146 במקרה זה כה״י התימניים מייצגים את המשך ההתפתחות של ענף M6.

147 טענה זו הועלתה על ידי בעל דקדוקי סופרים (עמ׳ 148 אות ס׳): „ומ״ש ברי״ף ובר״ן א״ל [אבוה דשמואל] שוינכו ככותאי שבוש הסופרים הוא דהאי רבב״ח תלמיד ר׳ יוחנן הוה ומה עניינו לאבוה דשמואל" וכו׳. בהקשר זה גם מעניינת קביעתו של המרהש״ל „אתו ואמרו ליה לאביי כו׳ נ״ב ברי״ף גריס אתו ואמרו ליה לאבוה והר״ן כתב אבוה דשמואל ועל כל פנים אביי טעות סופר הוא וק״ל." אינני יודע על סמך מה קבע שגירסא זו היא טעות סופר. וכותב בעל דקדוקי סופרים: „וכל מ״ש המהרש״ל בזה ח״ו לא אמרו הגאון ז״ל מעולם ובוקי סריקי תלו ביה."

השלישית היא שהמקור להגהה זו גלוי לעין: הוא מצוי בסוגיא בסמוך, בדף נד ע"א: „אלא מלמד שבא צבעון על אמו והוליד ממנה ענה." הביטוי „שיצא ממנו" בודאי יזכיר לסופר את ה„הוליד" שבסמוך.[137] נראה לי שדוגמא זו חשובה מפני שהיא מצביעה על תהליך השינוי שחל בכה"י התימניים. במקרה הזה אפשר לראות את כה"י באמצע התהליך גופו. אילו בשני המקרים מצאנו את הגירסא „הוליד" בשני כה"י מתימן, לא היה כה פשוט לומר שפיתוח מאוחר לפנינו.

ההבדל השני בקטע זה הוא שכה"י התימניים גורסים „פתחו כולם ואמרו," ובשאר כה"י אין המילים „פתחו כולם." אבל בפירוש ר"ח כתוב „אמר דלמא חס ושלום פסול יש במטתי פתחו כלן ואמרו ,שמע ישראל ה' אלהינו ה' אחד.' כיון ששמע להם כך, פתח הוא ואמר ,ברוך שם כבוד מלכותו לעולם ועד.'" כאן ר"ח אינו מצטט את לשון הגמרא במדויק, ונראה לי שכדי לסגנן את המשפט הוא הוסיף את המילים: „פתחו כלן," כדי להקביל לחלק השני (שנמצא בכל עדי הנוסח): „פתח ואמ'." ברור איפוא שמדובר בפיתוח ובעיבוד אלא שכאן נראה שמדובר בפעילות קדומה יותר. ואע"פ שאין כאן אפשרות להוכחה חד משמעית, נראה לי שזה סגנונו של רבנו חננאל עצמו ומסרני כה"י התימניים העתיקו מפירושו או הושפעו מפירוש דומה. ושלשה נימוקים לדבר: א. מסגנון הפירוש נראה שהר"ח אינו מצטט; ב. אין זכר לנוסח זה בכ"י אחרים;[138] ג. בהמשך יש גירסא יחידאית נוספת של הר"ח (שנראית כפירוש), שגם היא נכנסה לכה"י התימניים.[139] ההבדל בין הדוגמא הראשונה („הוליד") והשניה („פתח ואמ'") הוא, שכנראה הראשונה קרתה בשלב מאוחר מאד, והשניה התרחשה כתוצאה מפירוש של ר"ח, ולכן מופיעה בשני כה"י מתימן. אבל העובדה שהיא לא מופיעה בכ"י אחרים מוכיחה, שמדובר בגירסא מאוחרת.

דוגמא 2 (נא ע"א)

TJTS	*M6*	*V125*
כי אתה רבא בר בר חנה אכל חלב דאיתרא[140]	כי אתא רבה בר בר חנה אכל תרבא דאיתרא[141]	כי אתא רבה בר בר חנה אכל דאייתרא[142] [<...>]
עייל גביה רב אויא ורבה בר בר חנין כדחזינהו	על לגביה רב חייא[143] ורבא בר בר חנן כיון דחזינהו	על לגביה רב אויה ורבה בר חנן כיון דחזינהו

137 שם, בניגוד לכל כה"י (חוץ מכ"י SAS) שגורסים „והוליד ממנה," כה"י התימניים וקטע גניזה G188 גורסים: „והוליד."

138 וכאן לשון שאין דרכם של סופרים להשמיט אם אכן היא היתה בגירסא הקדומה.

139 בTJTS וTCOL בהמשך: „אמ' ר' אבהו באושא התקינו שיהוא אומרין אותו בקול מפני תרעומת המינים." ור"ח שם: „התקינו במקום שאין בו מינין לאמרו בחשאי ובמקום שיש בו מינין ואמרין אותו בקול [רם], באושא הוה שכיחי מינין." המשפט האחרון נראה כדוגמא בעלמא, ואינו אלא פירוש, אבל כה"י התימניים העתיקו פירוש זה בפנים.

140 וכן הוא בקטע גניזה G84: „אכל חלב שעל החטוור איתרא."

141 וכן הוא בכ"י JTS, וSAS. וכן בחידושי הר"ן, בחידושי רבנו דוד, בערוך, ובפסקי הרא"ש.

142 כן הוא בV109, M95, OX, V134 וVEN. וכן בפסקי הרי"ד, מהר"ם חלאווה, ספר הראבי"ה, המאירי, ספר מאורות, ורש"י.

143 גם JTS גורס כך, אבל לא נראה לי שגירסא זו קשורה לענפים אלא היא נראית טעות גראפית, כי השם אויא לא שכיח כמו חייא וקל להתבלבל ביניהם.

שלא תוקנה. אולם לאחר העיון בשינויים האלה, נראה שהמכנה המשותף ביניהם הוא שרוב רובם נראים משניים ביחס לגירסא המשותפת של כ״י M6 ו־V125. עובדה זו מעלה בפנינו עוד אפשרות, והיא ששינויים אלו נכנסו לנוסח התלמוד בתקופת הגאונים, לאחר פילוג הענפים.

אם כך הדבר, אזי לפנינו בפרק „מקום שנהגו״ תופעה דומה לזו שגילה ש״י פרידמן במסכת בבא מציעא ביחס לכתבי-היד מן הוטיקן (ו^א ו^2). הם דומים מאד זה לזה בנוסח, ולפי פרידמן הם מהווים המשך של הענף הפעיל פמ. כותב פרידמן: „אופיים של השינויים האלה מתורץ יותר, אם נראה בהם שלבים מאוחרים של ענף פמ – ,מאוחרים׳ יחסית, אבל קדומים לתקופת הראשונים הנ״ל!״[133] בדוגמאות אלו (למעט דוגמא מספר 1 ודוגמא מספר 8) נביא רק את גירסת כ״י TJTS ובצדו הנציגים של הענפים. כאשר יש שינויים בכ״י TCOL אציין אותם בהערות.

דוגמא 1 (נו ע״א). לא בכל מקום שיש בכ״י אלה גירסת יסוד שונה מדובר באמת בגירסא קדומה. בדוגמא הבאה אפשר להוכיח את איחורה של הגירסא על ידי טיבה ואי הסכמתם בין כה״י התימניים עצמם.[134] בדף נד ע״א, בסיפור על יעקב ובניו נאמר:

TJTS	*TCOL*	*M6*
אמר שמא יש במטתי פסול כאברהם שהוליד ישמעאל וכיצחק שיצא ממנו עשו פתחו כולם ואמרו לו...	אמר שיש במיטתי פסול כאברהם שיצא ממנו ישמעאל וכיצחק שיצא ממנו עשו פתחו כולם ואמרו לו...	אמ׳ שמא יש במטתי פסול כאברהם אבי שיצא ממנו ישמעאל וכיצחק אבי שיצא ממנו עשו אמרו לו...

בדוגמא זו אנו עדים לשני שינויים: אחד – בגוף התלמוד (או נוסח יסוד), והשני – תוספת. אפשר לטעון שדוגמא זאת אינה שייכת לעניננו (לפחות השינוי הראשון), היות ואין הסכמה בין כה״י התימניים עצמם. פעמים בקטע קצר באות המילים „יצא ממנו״ במובן „הוליד״ ובכל כה״י בשני המקרים כתוב „יצא ממנו״,[135] חוץ מן המקרה הראשון בכ״י TJTS, שם כתוב: „שהוליד״. נראה שהשינוי מ„שיצא ממנו״ ל„הוליד״ משקף פעילות של פישוט הלשון, ובודאי אינו שייך כלל וכלל לענפים אלא הוא תופעה מאוחרת שהתרחשה בתימן. ולמרות שאי אפשר להוכיח זאת באופן חד משמעי, ישנן שלוש ראיות ששינוי מאוחר לפנינו. ראיה אחת היא שבכ״י TCOL אין הנוסח „שהוליד״ קיים כלל והגירסא היא כבכל העדים האחרים.[136] הראיה השניה היא שטיב השינוי נראה כפישוט לשון, תכונה מובהקת של שינוי מאוחר. והראיה

133 „כרך הנוסח״ עמ׳ 50. וראה ההמשך שם: עמ׳ 50-55.

134 רוזנטל הגדיר כתבי-יד אלו כ„בני דודים״. הוא כותב: „ת (TCOL) ו-ע (TJTS) אחים הם, או נכון יותר בני-דוד. אני נותן עדיפות ל-ע, ולא רק בשביל שהוא שלם, בלי חסרון דף״ וכו׳ („תולדות הנוסח״ עמ׳ 10). על פי רוב הם לא מסכימים כאשר יש טעות באחד מהם, ולכן ברור שהם לא הועתקו אחד מן השני, וגם לא נראה שהועתקו ממקור משותף כפי שרוזנטל מציין.

135 וכן בספרי דברים, פיסקא לא (מה׳ פינקלשטין, הדפסה שניה; ניו יורק: בית המדרש לרבנים באמריקה, תשכ״ט, עמ׳ 53): „אלא שהודה ושבח שלא יצא ממנו פסולת.״ אין ספק ש„יצא ממנו״ היא הגירסא המקורית.

136 ישנה תופעה דומה של אי הסכמה בין כתבי יד התימניים בדוגמא שהבאנו לעול, שיטת רוזנטל בעניין „לישנא אחרינא״ דוגמא 1.

דוגמא 2 (נד ע"ב). **בדוגמא הבאה אנו רואים את המגמה של קיצור ופישוט הלשון כאחד. בדף נד ע"ב:**

TJTS	*M6*
מותיבי אין בין תשעה באב[130] לתענית צבור אלא שזה אסור בעשיית מלאכה וזה מותר בעשיית מלאכה הא לרחיצה זה וזה שוין ותניא נמי גבי תענית ציבור כשאמרו...	מתיבי אין בין תשעה באב לתענית צבור אלא שזה אסור בעשית מלאכה וזה מותר בעשית מלאכה הא לכל דבריהם זה וזה שוין ואלו גבי תענית צבור תניא כשאמרו...

כאן הנוסח של כה"י התימניים[131] ברור יותר. מן המילים „הא לכל דבריהם" הקושיא אינה ממוקדת, ולעומת זאת הסגנון „הא לרחיצה" מצביע הישר על הבעיה: אם בתשעה באב אסור ברחיצה, אפילו פניו ידיו ורגליו ובתענית ציבור כפי שהברייתא תציג מותר ברחיצת ידיו פניו ורגליו, איך כתוב שהבדל היחיד ביניהם היא מלאכה? נראה שהשינוי ל„הא רחיצה" התחיל כפירוש ל„הא לכל דבריהם," ולאחר זמן נכנס פנימה (או נשמטה המילה „פירוש") במקום הנוסח המקורי. גם הסגנון „תניא נמי" במקום „ואלו...תניא" פשוט ומוכר יותר ללומדי התלמוד, ולכן שינו מסרני כה"י התימניים כדי להתאים לסגנון הרגיל.

סוג ג: ענפים?

בפתיחה כאשר דנו בכי"י V125 וM6 ראינו שכה"י התימניים התנהגו כשאר כה"י המאוחרים, ומציגים נוסח מעורב, עתים על פי ענף V125, עתים על פי ענף M6. ישנן מספר דוגמאות בפרקנו, שבהן כה"י התימניים שומרים על גירסת יסוד שנראית קדומה ושייכת לטיב השינויים של הענפים, אבל בM6 וV125 הגירסא היא שונה (על פי רוב הם מסכימים). אין מספיק דוגמאות כדי להעמיד את כה"י התימניים כענף נפרד,[132] וגם בין ההבדלים הרבים שנראים כשייכים לפילוג של ענפים, כה"י התימניים מחולקים בשוה בין ענף M6 וV125 בגירסת יסוד, ומכלל כל השינויים (כולל הוספות) נוטים הם קצת לצד V125. עובדה זו אומרת, שכה"י התימניים אינם ענף נפרד (כמו שטען רוזנטל) אלא מסורת נוסח מאוחרת, שלעתים (כמו כל מסורת מאוחרת) שומרת על גירסא קדומה.

חלק מן המקרים אפשר להסביר בדרך שהסברנו לעיל, לאמור: השינויים האלו התרחשו בתקופה מאוחרת יחסית, ואולי אפילו בתימן. למרות זאת יש מקרים לגביהם הסבר זה אינו סביר, ונראה שגירסת כה"י התימניים היא קדומה, דבר שאותו אפשר להוכיח על פי כי"י אחרים או על סמך הבאות מספרות הגאונים. במקרים כאלו אפשר להעלות כמה אפשרויות. אפשר לטעון ששינויים אלו היו במקורם באחד מן הנציגים של הענפים, אבל במשך הזמן הנציגים של הענפים תוקנו והותאמו אחד לשני, ובכה"י התימניים שרדה גירסא עצמאית

130 בTCOL נוסף „ליום" וכן בV134.

131 במקרה זה שרדה גירסת כתב-יד שוקן, וכמו בדוגמאות האחרות היא כמעט זהה לכ"י TJTS: „מותיבי אין בין תשעה באב לתענית צבור אלא שזה אסור בעשית מלאכה וזה מותר בעשיית מלאכה הא לרחיצה זה וזה שוין ותניא נמי גבי תענ<..>ת צבור כשאמרו" וכו'.

132 גם חשוד הריכוז של שינויים כאלו, כמו בדף נה ע"ב. אם שינויים אלה באמת היו קשורים לענפים נראה שהיו מפוזרים לאורך כל הפרק באופן אחיד.

כלומר: הם בני ארץ ישראל לא עושין כמונו כי יש להם יותר סמכות (כך כוונת הב״ח, הוא מגיה ל„לא עבדי כוותן״).[125] התוספות מיישבים קושיה זו בטענה שמימרת אביי מופיעה במסכת חולין (יח ע״ב), ושם היא משתלבת יפה, כי מדובר בר׳ זירא שנסע מבבל לא״י ואימץ את ההיתר של ארץ ישראל בניגוד למנהג בבל, ואם כן מובן הלשון „כיון דאנן כייפינן להו (לבני א״י) עבדינן כוותייהו״, „אנו עושין כמותם״ ואפילו אם זה נגד מנהגנו. וכוונת התוספות כנראה שבמקור אביי אמר את הדברים על רבי זירא ולכן אין התאמה במסכת פסחים במקרה של רבה בר בר חנה. אבל בכ״י TCOL כאן הגירסא היא: „אבל מארץ ישראל לבבל כיון דאנן כיפינן להו לא״ ויש גירסא דומה בכ״י V134: „כיון דאנן כייפינן להו לא עביד כוותייהו״ (ושמא הכוונה „לא עבוד כוותייהו״). בכה״י התימניים חסר המילים הקשות „עבדינן כותיהו״ ובמקומן: „לא״.[126] מובן וברור שמי שהולך מארץ ישראל לבבל לא מתחייב לשמור על הכלל: „נותנין עליו״ וכו׳ ומובן גם שאין לבני בבל רשות לעשות כמותם. אם כן שתי מגמות פועלות כאן יחד. אחת קיצור ופישוט, והשניה הגהה כתגובה לבעית התוספות. לאחר ההשמטה אין לנו הבעיה של האי-התאמה של „עבידנן כוותיהו״ והמילה „לא״ מספיקה למסור לנו את כל המסר הדרוש.

בשורות אלו יש דוגמא נוספת של השמטה ודוגמא נוספת של הוספה. הראשונה היא דוגמא רגילה של כה״י התימניים לקצר, במקום לכתוב „ורבה בר בר חנה לית ליה הא דתנן״ (כברוב הגירסאות), בכה״י התימניים גורסים: „ולית ליה לרבא״[127] וברור שהכוונה לרבה[128] בר בר חנין שמוזכר מקודם, והסתפקו רק בשם הראשון.[129] בכה״י התימניים יש נטיה להשמיט „הא דתנן״ בפרקנו, וכנראה הסיבה לכך היא שהדבר מובן שהמשפט בא מן המשנה.

יש גם הוספה כאן, והיא: „ואל ישנה אדם מפני המחלוקת״ שהיא המשך של אותה משנה, ובאמת זה הדבר שמהוה את הקושי העיקרי להתנהגות של רבה בר בר חנה, שלכאורה מתנהג בניגוד למנהג המקום וגורם מחלוקת. והנה, גם רש״י מזכיר ומדגיש: „אל ישנה״! בד״ה „הני מילי מבבל לבבל״ כותב רש״י: „מעיר לעיר בבבל דכיון דלא כייפי להדדי אם ישנה מנהגן לעיניהן יש כאן מפני המחלוקת וכל שכן מבבל לארץ ישראל אל ישנה את מנהג המקום מפני המחלוקת.״ ובד״ה „אבל מארץ ישראל לבבל,״ כותב רש״י: „אם ישנה את המנהג בבבל אין כאן מחלוקת״ וכו׳. נראה לי, שכתוצאה מפירוש זה הוסיפו מסרני כה״י התימניים את המילים האלו מן המשנה לתוך הקושיא של בעל הסוגיא.

125 בתוס׳ הר״ש משאנץ הגירסא כמו בחידושי הר״ן (ראה ההערה הקודמת): „דהוה לי׳ למימר עבדי כוותייהו״ וצריך למחוק ההוספה של המוציא לאור: „[לא].״ הב״ח מגיה „כוותייהו״ ל„כוותן.״

126 ראוי להעיר שיש בסיום דברי אביי פילוג בין ענף M6 לבין ענף V125. כאמור, מינכן 6 גורס: „אבל מארץ ישראל לבבל כיון דאנן כיפינן להו עבדינן כותיהו״ ואילו וטיקן 125 גורס: „אבל מארץ ישראל לבבל לא, כיון דכיפינן להו עבידנן כואתיהו.״ סביר להניח שבמקרה זה כה״י התימניים התבססו על ענף V125 (והשווה נוסח הדפוס).

127 כן הוא בשני כי״י התימניים, וראה בהערה הבאה. גם רש״י בדף נד ע״א ד״ה „ואינהו כמאן,״ במקום לכתוב „רבה בר בר חנה״ כותב רק „רבה.״ ובכ״י V109 כאן: „ורב לית ליה הא דתנן״ וכו׳, ובקטע גניזה G48 יש סיגנון דומה לגירסת כה״י התימניים: „ולית ליה לרבא בר בר חנא הא דתנן,״ ונראה שכך היתה הגירסא המקובלת בתימן לפני הקיצור. וקיצור זה הוא על פי הנהוג מכבר במקורות חז״ל, ראה תוספתא כפשוטה גיטין, עמ׳ 902, לשורה 11.

128 כן הוא בTJTS; ובTCOL: „רבא בר בר חנון.״

129 ומעניין שבTJTS כתוב „רבה״ דוקא אבל לא מפריע לסופר לכתוב בהמשך „רבא.״ וראה: ש״י פרידמן, „כתיב השמות ,רבה׳ ו,רבא׳ בתלמוד הבבלי,״ סיני קי (סיון-תמוז תשנ״ב) עמ׳ קמ-קסד.

רוב המקרים של קיצור בכה״י התימניים מתרחשים כאשר יש ציטוט חוזר של חומר,[122] ושינויים כאלו מתרחשים לא רק בדברי בעל הסוגיא אלא גם במימרות.

דוגמא 1 (נא ע״א). קושיא היא מניע שכיח לקיצור. בדוגמא הבאה נראה מקרה של השמטה, המשלבת גם מגמה של קיצור, וגם תגובה לפירוש וקושיא. בדף נא ע״א, יש קושיא מן המשנה על רבה בר בר חנה, כיצד הוא התעלם ממנהג בבל ואכל „דאיתרא,״ הרי לכאורה אסור הדבר שהרי „נותנין עליו חומרי מקום שיצא משם וחומרי מקום שהלך לשם.״ תשובתו של אביי היא מוקד הדיון שלנו בכה״י התימניים. נציג כאן בנוסף להם כ״י M6:

M6	TJTS	TCOL
ורבה בר בר חנה לית ליה הא דתנן נותנין עליו חומרי מקום שיצא משם וחומרי מקום שהלך לשם	ולית ליה לרבא נותנין עליו חומרי מקום שיצא משם וחומרי מקום שהלך לשם ואל ישנה אדם מפני המחלוקת	ולית ליה לרבא נותנין עליו חומרי מקום שיצא משם וחומרי מקום שהלך לשם ואל ישנה אדם מפני המחלוקת
אמ׳ אביי הני מילי מבבל לבבל ומארץ ישראל לארץ ישראל אי נמי מבבל לארץ ישראל אבל מארץ ישראל לבבל כיון דאנן כיפינן להו עבדינן כותיהו.	אמ׳ אביי הני מלי מבבל לבבל ומארץ ישראל לארץ ישראל או נמי מבבל לארץ ישראל אבל מארץ ישראל לבבל כיון דאינון כיפינן להו לא.	אמ׳ אביי הני מילי מבבל לבבל ומארץ ישראל לארץ ישראל או נמי מבבל לארץ ישראל אבל מארץ ישראל לבבל כיון דאנן כיפינן להו לא.

לפי גירסת כ״י M6 צריך לפרש שתשובתו של אביי „אבל מארץ ישראל לבבל כיון דאנן כיפינן להו עבדינן כותיהו״ היא: שרבה בר בר חנה התעלם מן הכלל „נותנין עליו״ וכו׳ כי הוא לא שייך כאשר מדובר באדם העובר מארץ ישראל לבבל. הסיבה לכך היא שיש יותר סמכות לבני ארץ ישראל מבני בבל, ולכן הם יכולים להמשיך במנהגם אפילו אם אסור הוא בבבל. כך רש״י מסביר: „אבל מארץ ישראל לבבל אם ישנה את המנהג בבבל אין כאן מחלוקת דאנן כייפינן לבני א״י דאינהו סמיכי ובבבל לא סמיכי, עבדינן כוותייהו, כלומר אם באין משם לכאן אין להם לשנות מנהגם אלא עושין כמקומן.״ רש״י מפרש „אנן כיפינן״ על בני בבל, אבל „עבדינן כותיהו״ הוא מפרש על בני ארץ ישראל! הרי הוא כותב בסוף דבריו „אלא עושין כמקומן.״ והדבר קשה שהרי לא כתוב „עבדי״ או „עבוד״ אלא עבדינן, וברור שהוא אותו נושא של „אנן״ שבראש המשפט. אבל לפי ההקשר אין לרש״י ברירה.[123] התוספות מקשים על מימרת אביי: „לא עבדי כוותייהו ה״ל למימר,״[124] כלומר: במקום „עבדינן כוותיהו״ היה צריך לגרוס: „לא עבדי כוותייהו.״ אבל גם גירסא זו קשה, כי אם כתוב „עבדי״ – „עושין״ הכוונה לבני ארץ ישראל, וצריך לומר „כוותן״ – „כמונו״ כבני בבל,

122 ראה: פרידמן, „כרך הנוסח,״ עמ׳ 53, „צמצום היקף ההבאה.״

123 הר״ן מנסה לישב בעיא זו וכותב: „ודקאמ׳ נמי עבדינן כותייהו לא דייק הכא, דעבדי כותייהו הוה ליה למימר ולא עבדינן, אלא שמשום דהך לישנא שייך שפיר בפ״ק דחולין גבי מוגרמתא דרב ושמואל, נקטיה נמי הכא״ (חידושי הר״ן, מהד׳ ליכטנשטיין; ירושלים: הוצאת מוסד הרב קוק, תשנ״א, עמ׳ רצד).

124 בדפוס ונציה כתוב בתוספות (דה״ה עבדינן כוותיהו): „לא עבדי ככותין ה״ל למימר״ ושמא במקור היה כתוב: „כוותין״ כהגהת הב״ח, וראה המשך.

פירוש בפנים: „הכיפין פיר׳ אמירין ואין אוכלין על שלבין השיצין פיר׳ קוצים הכי קאתני״ וכו׳.[116] ברור שלא כל הדיבור הוא „פירוש,״ אלא רק המילה „קוצים״ והסופר התיחס להוספה הקדומה יותר כגוף התלמוד.

מה המקור לכל ההוספות במקרה זה? נראה שהוא שילוב בין ר״ח ורש״י. בהתחלה העתיק המגיה מפירוש ר״ח כמעט מילה במילה. הוא פותח ב„והכי קתני,״ אותו שאב מפירוש ר״ח, וייתכן שאף העתיק „במתני,״ אבל מגיה מאוחר השמיט „במתני׳״ היות ואין זה משתלב במשא ומתן הרגיל של התלמוד. אבל רבנו חננאל פירש שר׳ יהודה במשנתנו דומה לשיטת ר׳ אליעזר בברייתא, ודבר זה קשה קצת כי הלשון „צא והבא לך״ יותר מתאימה לכל דבר בחבית בפני עצמו (וכרבן גמליאל), ולא כר׳ אליעזר שמין אחד אוסר את השנים האחרים. לכן העתיק המגיה את החלק השני מפירוש רש״י, וכמו בחלק הראשון גם כאן כמעט מילה במילה, אבל תרגם את הדברים לארמית (ואולי גם זה שלב מתקדם יותר, כי ארמית נראית יותר כמו גופי תלמוד), והוסיף את הדברים של רבן גמליאל. בפירוש שבא לאחר הברייתא של רשב״ג גם ניכרת השפעתו של רש״י, ואף אם אין הדברים ציטוט מדויק מדבריו, נראה שזה קיצור לשונו. וכמו בהוספה הראשונה, המגיה מתחיל את ההוספה במילים „והכי קתני״ כדי להקביל להוספה הראשונה, וגם מפני שרש״י משתמש בלשון דומה: „מתניתין הכי קאמר.״ עם זאת, המגיה איננו מעתיק את המילים „משנתנו״ או „מתני׳,״ כדי שהדברים לא יזוהו כהוספה.

כפי שראינו, מימרת רבינא בכה״י התימניים באה בלשון ארוכה, וכוללת גם התקפה על הדעה הקודמת: „בהא הא איפליגו בה במתניתין חדא זימנא! אלא בפלוגתא דהאני תנאי״ וכו׳. גם כאן נראה שאנו עדים לפיתוח מאוחר של הסוגיא, שתכליתו לקשור הכל יחד בצורה יפה. ובאמת תמוה ובולט לפי הנוסח בשאר כ״י, שרבינא לא מתקיף כמו רב אשי. אבל הוספה זו לדעתי לא מעשה ידי הענפים הקדומים היא אלא יֵש לראות בה לשון מאוחר. מצאנו בבבלי הנדפס את הביטוי „והא איפלגו בה חדא זמנא״ בשינויים קלים בהקשרים רבים,[117] אבל אף פעם לא בצירוף „מתניתין.״[118] ובהמשך הפרק, בדף נד ע״ב, במקום „תנינא״ בכל כ״י, בכה״י התימניים[119] הגירסא היא: „הא אמרה ר׳ יוחנן חד זמנא.״[120] נראה לי איפוא, שמסרני כה״י התימניים הכירו היטב את הלשון „והא איפלגו בה חדא זמנא״ והוסיפו „מתניתין״ להשלים את ההתאמה. העובדה שאין כאן סגנון אמיתי של בעלי הסוגיא מלמדת, שאכן בעיבוד מלאכותי עסיקינן.

סוג ב׳: השמטות

בכה״י התימניים יש מקרים של לשון קצרה. לעתים לשונות אלה נראות ממש כענף אחר ושונה,[121] אבל את רובן ניתן לתלות במגמה של פיתוח ועיבוד, שהרי לעתים השמטת מילים מיותרוֹת מקלה על ההבנה.

116 פירושים אלו על פי הערוך ערך כף ד (ערוך השלם, כרך ד׳, 285): „וכפים הם האמירים וי״א הן הכפות תמרים. שיצים הן קוצין.״

117 ראה למשל: סוכה טו ע״א, חגיגה יז ע״ב, יבמות צו ע״א, כתובות עא ע״א, יבמות קי ע״א, מנחות קו ע״ב.

118 ושמא גם הוא דיבור מפירוש ר״ח, שהזכיר את מתניתין: „והכי קתני במתני׳.״

119 כולל כתב יד שוקן 2023.

120 הביטוי „הא אמרה פלוני חדא זימנא״ מופיע פעמים רבות בתלמוד הנדפס, ורובן (שבע מקרים) בקשר לרבי יוחנן.

121 בדוגמאות כאלו נדון בסוג ג׳, להלן.

דוגמא 6 (פירוש רש"י ורבנו חננאל). יש דוגמאות שבהן השפעת פירוש ר"ח או פירוש של פרשן אחר נראה הגורם לשינויים שבכה"י התימניים אע"פ שאי אפשר להוכיח את הדבר באופן חד משמעי. דוגמא מאלפת לכך יש בדף נב ע"א. שם אנו מוצאים בכה"י התימניים משא ומתן שנראה דומה מאד בלשונו לבעל הסוגיא, במבט ראשון מתקבל הרושם שהוא „לישנא אחרינא." אך לאחר העיון מתברר, שמדובר בלשון הרחבה ופירוש, ולא בלשון תלמוד קדומה כלל. נביא את הדברים במלואם:

TJTS	*M6* [פי' ר"ח] [פי' רש"י]
מתקיף ליה רב אשי מידי גבא דחמרא קלטינהו אלא אמר רב אשי בפלוגתא דהאני תנאי דתנן הכובש שלשה כבשים בחבית אחת ר' אליעזר אומ' אוכל על הראשון ר' יהושע אומ' אוכל על האחרון רבן גמליאל אומ' כל שכלה מינו מן השדה מבערו מן הבית והלכה כדבריו	מתקיף לה רב אשי לר' יהודה גבא דחמרא קלטינהו אלא אמ' רב אשי בפלוגתא דהני תנאי דתנן הכובש שלשה כבשין בחבית אחת ר' אליעזר או' אוכלין על הראשון ר' יהושע או' אף על האחרון רבן גמליאל או' כל שכלה מינו מן השדה יבער מן החבית והלכה כדבריו
והכי קתני וכן הכובש שלשה כבשין בחבית אחת ולא כלה אחד מהן אינו חייב לבער כר' יהושע	[ר"ח: והכי קתני במתני' וכן הכובש שלשה כבשין בחבית אחת ולא כלה הכל אלא אחד מהן אינו חייב לבער...]
ר' יהודה אומ' צא והבא לך אף אתה מהא מינא הא ליכא כרבן גמליאל דאמ' כל שכלה מינו מן השדה מבערו מן החבית.	[רש"י: ר' יהודה אומר צא והבא לך אף אתה מאותו המין מן השדה והרי לא תמצא בשדה ואסור כרבן גמליאל.]
רבינא אמר בהא הא איפליגו בה במתניתין חדא זימנא אלא בפלוגתא דהאני תנאיי דתניא אוכלין בתמרים עד שיכלה האחרון שבצוער רבן שמעון בן גמליאל אומ' אוכלין על שלבין הכיפין ואין אוכלין על שלבין השיצין.	רבינא אמ' בפלוגתא דהני תנאי דתניא אוכלין בתמרים עד שיכלה אחרון שבצוער רבן שמעון בן גמליאל או' אוכלין על שלבין הכיפין ואין אוכלין על שלבין השיצין.
והכי קתני וכן בתמרים אינו חייב לבער עד שיכלו שלבין השיצין, רבי יהודה אומ' צא והבא לך אף אתה ובין הכיפין ליכא.	[רש"י: ...מתניתין הכי קאמר תנא קמא כלה לגמרי אף מבין השיצין חייב לבער אבל כלו מן הכיפין ועדיין יש בשיצין אינו חייב לבער רבי יהודה אומר צא והבא לך אף אתה ממקום הראוי ליטלן ולא תמצא ולחומרא אמרה רבי יהודה.]

במבט ראשון עלולים אנו לומר, שיש בסוגיא זו הבדל קדום בין נוסח כה"י התימניים ובין הנוסח הרווח, ולראות בו „לישנא אחרינא." אבל לאחר עיון בדברי רבנו חננאל ופירוש רש"י כאן, נראה, שלפנינו דוגמא נוספת של שילוב דברי פירוש לתוך הגמרא. נראה לי ששילוב הפירושים התרחש בשלבים מאוחרים, ובכה"י הקדומים בתימן לא היו הוספות כאלו. בשלב ראשון הן נוספו בגליון או בפנים בציון: „פירוש." לאחר זמן השתלבו הפירושים בפנים או נשמט הציון והמעתיקים הפכו את הפירושים לגירסא.

כ"י TCOL מיצג כאן התפתחות מתקדמת אף יותר, כי בברייתא של רשב"ג צויינו דברי

תכונה זו היא חשובה לנו כי כך היתה אפשרות שהפירושים הקצרים והפשוטים יהפכו לחלק מגוף התלמוד. ככל שהפירושים קצרים וקולעים יותר, גדלים הסיכויים שהמסרנים המאוחרים יתיחסו עליהם כגופי תלמוד.

דוגמא 5 (פירוש רבנו חננאל). לאחר העיון בכל התוספות בכה״י התימניים נראה לי, שבכמה מקרים כה״י התימניים נהגו לתקן ולשפר לשון הנוסח שלהם על סמך פירוש רבנו חננאל וגם – כפי שנראה להלן – לשלב את פירוש ר״ח לתוך המשא ומתן של הסוגיא, באופן שנותן את הרושם כאילו הוא חלק מן הסוגיא. נביא כאן כמה דוגמאות. בדף נד ע״ב במימרתו של רב פפא כתוב:

M6	*TJTS*	פירוש ר״ח על פי כ״י וטיקן 128
רב פפא א׳ אינו	רב פפא אמ׳ אינו	ופריק רב פפא פירוק אחר
		אליבא דרבא
		אינו כתענית צבור כתענית
כראשונות	כראשונות	הראשונות
	דקילן[111] דבין השמשות	דקילן כדתנן אוכלין
	שלהן מותר	משחשיכ׳ וכו׳
אלא כאחרונות	אלא כאחרונות	אלא כאחרות
	דחמירן בין השמשות שלהן	דחמירן ובין השמשות שלו
ואסור[112]	אסור	אסור

ברור כאן, שכה״י התימניים מעתיקים מפירוש ר״ח ולא מגירסתו, כי תוכן לשונו הוא תיאור פרשני של התירוץ של רב פפא, ולא ציטוט.[113] יתר על כן, הם משנים את לשונו: „כדתנן אוכלין משחשכה״ וכו׳, שאינו ברור כל צרכו, ל„דבין השמשות שלהן מותר״ כדי לעזור ללומד,[114] וליצור הקבלה לחלק השני שכתוב בר״ח: „דבין השמשות שלהן אסור״. יוצא שבשני[115] כה״י התימניים פירוש ר״ח הפך לגופי תלמוד, בשניהם הפירוש בפנים ובשניהם אין כל ציון שהוא פירוש.

יתר על כן, בTCOL אנו עדים לתיקון נוסף: „דקילן״ תוקן ל„קימאלן״ כלומר: קימא לן. ברור שאין זו כוונת פירוש ר״ח, אלא כוונתו לומר לא כראשונות שאנו מקילים אלא כאחרונות שאנו מחמירים. ונראה שכך הובנו הדברים בתחילה גם בכה״י התימניים, אבל המגיה של TCOL התקשה ולא שם לב להקבלה של „דחמירן״ וסבר לראות כאן כתיב רגיל של המונח: „דקימא לן״ שאינו שייך כאן כלל וכלל. פירוש ר״ח הפך בשבילו להיות גופי תלמוד.

111 בTCOL: „דקי[מא]לן״

112 כ״י וטיקן 125 אינו גורס „ואסור״ ראה כל עדי הנוסח במהדורה, עמ׳ 291.

113 זה מתבטא בלשונו התיאורית: „ופריק רב פפא פירוק אחר״ וכו׳, ובהוספה שהוא מוסיף ללשון רב פפא: „כתענית הראשונות״ ובהסבר על ידי ד׳ הפירוש: „דחמירן״ וכו׳.

114 כי אין הלומד מיד משווה „אוכלין משחשיכה״ ל„בין השמשות מותר״

115 במקרה זה מצטרף אליהם כתב היד התימני השלישי, כתב יד שוקן 2023. שם הגירסא כמעט זהה לכ״י TJTS: „רב פפא אמ׳ אינו כראשונות דק<..> דבין השמשות שלהן מותר אלא כאחרונות דחמירן דבין השמשות שלהן אסור״ וראה נספח ב׳ להלן.

אפילו במפורש. על הגליון של TCOL בדף נז ע״ב על המילה „למטופרסיה״:

TCOL	ערוך[109]
פ׳ בערוך גבה דינו ממנו ויש אומ׳ מטופרסי לשון ארמי הוא פי׳ נטל חלקו וגורלו מן העונש כנגד חובתו.	פי׳ גבה דינו ממנו וי״א מטופרסיה לשון ארמי הוא ופי׳ נטל חלקו וגורלו מן העונש כנגד חובתו.

מעניין הוא שהערה זו מופיעה גם במסורת הש״ס של דפוס וילנא. וכן עוד כמה פעמים פירוש הערוך מובא בקיצור על הגליון של TCOL וTJTS, למשל בדף נ ע״ב, כפירוש למילה „מתקולתא״ בכה״י התימניים כתוב: „פיר׳ משקל דמטוה״ ובערוך ערך צף א׳: „מתקולתא משקל המטוה שטוה בכל יום״ ופירוש זהה בלי התוספת נמצא ברבנו חננאל. וכן באותו עמוד פירוש ל„סימטא״ בשני כתבי יד התימניים בגליון: „פיר׳ שביל שליחיד״ ובערוך ערך סמטא: „פי׳ שביל יחיד והא לשון לעז ממש סימיטא חוזר לאסמכתא״ ובדף נג ע״א. על „אהיני דטובינא״ בTCOL בפנים: „ואהיני דטובניא פיר׳ פרי שלתמרה שאינו מבושל הן אוכלין וחייבין במעשר״ ובערוך (ערך אהין): „פי׳ אהיני פרי של תמרים שאינן מבושלין״ ובדף נו ע״א פירוש ל„דולוס״ בשני כה״י התימניים בגליון: „פיר׳ דופי״ ובערוך (ערך „דליס״): „פי׳ דופי וכן בלשון ערבי״ במקרה האחרון גם ייתכן שהם לקחו מפירוש רש״י, היות וגם הוא מפרש כך „דלס – דופי״

בדף נג ע״א יש דוגמא של פירוש שמובא בכה״י התימניים שמשותף לר״ח ולערוך, כפירוש ל„מילין״ בTCOL בפנים וTJTS בגליון: „פיר׳ עפץ״ וברבנו חננאל „סימן להרים מילין שהן עפץ גדילים בהרים סימן לעמקים דקלים כלומר אין אילן גדילים אלא בעמקים נפקא מינה דאין דקלים טובים אלא בעמקים ומהם ראוי להביא בכורים״ סגנון דומה לר״ח נמצא בערוך (ערך „מל״): „פי׳ עפצים גדלים בהרים ודקלים אין גדילתן אלא בעמקים נפקא מיניה דאין דקלים טובים אלא בעמקים ומהן ראוי להביא בכורים״ במקרה זה, לא ברור איפוא אם שאבו מפירוש ר״ח או מן הערוך, ואולי ישנו רמז לכך שהם העתיקו מן הר״ח, שהרי כתוב „עפץ״ ולא „עפצים״ כבערוך.

גם פירוש ר״ח בפני עצמו נכנס לכה״י התימניים. לא אמנה כאן את כל הדוגמאות, ונסתפק בכמה בולטות. בדף נא ע״ב בTCOL בפנים, ובTJTS בגליון על המילה „קורדקיסין״ כתוב: „פירוש מנעל שאין לו עקב״ ובר״ח שם: „בקורדקייסין פי׳ מנעל שאין לו עקב והא סנדי״ ובדף נה ע״א בTJTS בפנים: „הא איכא תלתא יומי ארבסר וחמיסר ומקצת שתסר״ ובר״ח שם: „הא איכא ג׳ ימים ארביסר וחמיסר ומקצת שיתסר״ ונראה ש„ג׳ ימים״ של רבנו חננאל תורגם לארמית בכה״י התימניים כדי לשלבו לתוך הגמרא. ובדף נו ע״א פירוש למילה „צאוי״ בגליון של TJTS „פי׳ ייבש״ ובפנים בTCOL „פיר׳ תיבש לחלוחיתו״ ובר״ח שם „פי׳ צואי יבש״ ובערוך (ערך צוו): „פי׳ שורף ומייבש לחלוחיותו״ כאן תופעה מעניינת שTCOL העתיק את הפירוש מן הערוך כאשר TJTS בחר בפירוש רבנו חננאל.

מן הדוגמאות שהבאנו ראינו שכה״י התימניים נהגו להעתיק פירושים במקרים רבים בין לתוך הטקסט בין לגליון. חשוב לזכור שעל פי רוב מגמתם היא להעתיק רק את החלק העיקרי של הפירוש, וכאשר הפרשן גלש לפירוש ארוך יותר הסופרים לא העתיקו יותר.[110]

109 ערוך, ערך מטרפסא (ערוך השלם, חלק ד׳, עמ׳ 124).

110 לדוגמא בפירוש רש״י לעיל דוגמא 2, ופירוש ר״ח והערוך לגבי „מילין״ בדף נג ע״א.

דוגמא 2 (פירוש רש"י). בדף נד ע"ב על „בגדו של אדם הראשון" בגליון של TJTS בציון „פי'," מועתק פירוש רש"י כמעט מילה במילה עד לפני שרש"י מציע פירוש בלשון „ואני שמעתי." אחר כך ממשיך המגיה להעתיק מפירוש רש"י דיבור המתחיל „יום הנחמה."

TJTS	רש"י ע"פ הדפוס
בגדיו של אדם הראשון שהיו חקוקות בהן כל מין חיה ועוף ובהמה והוא נמסר לנמרוד	בגדו של אדם הראשון שהיו חקוקות בו כל מין חיה ובהמה והוא נמסר לנמרוד על כן יאמר כנמרוד גבור ציד ועשו הרגו ונטלו לפיכך היה איש ציד
וזהו שכתו' <..>ודות אשר אתה בבית.	והן שכתוב בהן החמודות אשר אתה בבית.
	ואני שמעתי בגדיו של אדם הראשון היינו כתנות עור שהיו לו.
<..> הנחמ' פי' <..>כל אדם יתנחם <..>דע<..>.	ויום הנחמה של כל אדם מתי יתנחם מדאגתו.

דוגמא 3 (פירוש רש"י ומהר"ם חלאווה). בגליון של TJTS בדף נג ע"ב מובא פירוש רש"י, ומיד אחר כך מובא פירוש אחר, שדומה מאד לפירוש מהר"ם חלאווה על „דרש תודוס איש רומי מה ראו חנניה מישאל ועזריה."

TJTS	רש"י ע"פ הדפוס
פי' מה ראו שלא דרשו וחי בהם ולא שימות בהם.	מה ראו שלא דרשו וחי בהן ולא שימות בהן.
	פירוש מהר"ם חלאווה
ויש מפר' מה ראו שמסרו עצמן לתוך כבשן האש ולא הרגו עצמן כמו שע<..> שאול כשראה את פלשת<..> שיהרגו אותו.	ואית דאמרי' מה ראו שמסרו עצמן ולא המיתו עצמן כמו שעשה שאול שלא נענש כדאמרי'[107] אך את דמכם לנפשותיכם אדרוש יכול כשאול ת"ל אך.

ברור שהחלק הראשון הוא פירוש רש"י, אבל רש"י מביא רק הסבר אחד בפירושו. ברם בפירוש מהר"ם חלאווה מובאים ארבעה פירושים, שנים הראשונים בלשון „יש מפרשים" ושנים האחרונים „אית דאמרי." נראה שפירושו או פירוש דומה עמד לפני מסרני TJTS אך הם שינו את המילים „ולא המיתו עצמן" ל„ולא הרגו עצמן."

פירוש ר"ח ופירוש הערוך

רוזנטל ראה את פירוש ר"ח כעדות נוספת לקדמותו של הענף „לישנא אחרינא." אבל בפרק „מקום שנהגו" נראה בעליל כי הדברים הם הפוכים. כה"י התימניים סמכו על פירוש ר"ח והערוך, והכניסו פירושים אלו לתוך הטקסט התלמודי. כאן נדון בפירושים אלו במדור אחד בגלל הקירבה ביניהם.

דוגמא 4 (פירוש הערוך). פירוש הערוך מובא כמה פעמים בכה"י התימניים ופעם אחת[108]

107 בבראשית רבה (מה' תיאדור-אלבק: ירושלים: שלם הפצת ספרים, תשנ"ו) עמ' 324: „יכול כשאול ת"ל אך, יכול כחנניה מישאל ועזריה תלמוד לומר אך."

108 בדף נז ע"א, יש עוד הפניה ישירה לערוך, אך שם כתוב רק: „בערך אלת" ולא כתוב „ערוך."

וV125)[102] וראוי לשאול מניין לנו שאין כה״י התימניים מיצגים ענף נפרד? הוכחה אחת היא שכמו שהצבעתי כ״י M6 וV125 מתפלגים יותר ממאה פעמים בפרקנו, ומבין המקומות שאפשר לקבוע שM6 וV125 מתפלגים בגירסת יסוד, כה״י התימניים הולכים חצי מן המקרים לצד M6 וחצי מן המקרים כV125. בנוסף לכך, בצד M6 מצאתי כתב יד שהוא באופן עקבי הולך יחד עם M6, הלא הוא כ״י JTS. נראה לי שזאת הוכחה שהנוסח התימני שלפנינו הוא מעורב לגמרי. ברוב המקרים אין הגירסא בכה״י התמניים ניראת כגירסא הקשורה לפילוג ענפים, על אף שהיא שונה מן העדים האחרים. וזאת משום שברוב המקרים השינוי מתבטא בתוספת. נראה שההסבר לשוני שבין כה״י התימניים לשאר הנוסחים נעוץ בסיבות אחרות, ונעמוד עליהם בהמשך.

נביא כאן דוגמאות מן הפרק לצורך העיון בשאלה מה ההסבר לאופיו השונה של נוסח כה״י התימניים. ננסה ללכת מן הקל אל הכבד: נתחיל במקומות שבהם נראה פשוט שנוסח כה״י התימניים הוא מאוחר, ונתקדם למקומות שבהם הוא דומה לענף נפרד. יש כמה סוגים של הבדלים בין כה״י התימניים והאחרים. ראוי לסווג את השינויים ולדון בכל סוג בנפרד: א. הוספה ופירוש; ב. השמטות וקיצורים למיניהם;[103] ג. שינויים שמתאימים לפילוג הענפים.

סוג א׳: הוספה ופירוש

בפרקנו יש עשרים וששה מקרים, שבכה״י התימניים יש תוספת גדולה (מעל שמונה מילים). ביניהם יש מקרים של הוספה של כמעט מאה מילים. ברוב המקרים, ההוספות האלו מופיעות בפנים, ובלי כל ציון של ,פירוש;[104] ולעתים הן מופיעות בגליון.[105] פירושים אלו לפעמים זהים לפירוש של רבנו חננאל, הערוך ורש״י, ולעתים נראים כגליונות („פירושים״)[106] שנכנסו לגוף התלמוד ועברו פיתוח, עיבוד והתאמה לנוסח הפנים, עד כדי כך שאין הלומד מרגיש שהטקסט המונח לפניו יסודו בחומר שאינו חלק מקורי של הטקסט התלמודי.

פירוש רש״י

נפתח בדוגמאות שמקורם בפירוש רש״י:

דוגמא 1 (פירוש רש״י). בדף נד ע״א בגליון של TJTS מופיע פירוש ארוך שזהה כמעט מילה במילה לפירוש רש״י, ובלא ציון של „פירוש״ על התלמוד „איכא דאמרי אמ׳ רב פפא אמינא מילתא דשבור מלכא לא אמרה ומנו רבא״ כתוב כך:

TJTS (גליון)	רש״י ע״פ הדפוס
שמואל קרי ליה רבא שבור מלכא משום שהיה בקי בדינין והלכתא כותיה בדיני כדין היוצא מפי המלך מתקיים ושבור מלך פרסיים הוה בימ׳ ראבא	שמואל קרי ליה רבא שבור מלכא משום דבקי היה בדינין והלכתא כותיה בדיני כדין היוצא מפי המלך שמתקיים ושבור ממלך פרסיים היה בימי רבא

102 ראה לעיל ענפי הנוסח של פיק מקום שנהגו.

103 על פי רוב מגמת הקיצור בכה״י התימניים באה כדי לשפר את הסגנון או לענות על קושיא מסוימת, וברוב המקרים אין עדי נוסח נוספים הגורסים את הגירסא המקוצרת.

104 עשרים מקרים.

105 בין השש הנשארות: חמש בגליון בכ״י TJTS כאשר אחת מהן בפנים של כ״י TCOL, ואחת בTCOL שאיננה מופיעה בTJTS.

106 לצרכינו אין הבדל בין גליון ופירוש, היות ובתימן נהגו לכתוב פירושים בפנים כתב היד.

מפני שכתב-היד מתחיל רק בנוסח התלמוד שבדף ט ע"ב.[96] שלש דוגמאות נוספות הינן מקרים יוצא דופן; בדוגמא 19 קשה להכריע לכאן או לכאן, בדוגמא 22 מינכן 6 עומד לבד, כאמור, כנציג של "לישנא אחרינא" וכ"י ע (TJTS) גורס כמו "פסחים שלנו", ובדוגמא 7 כתבי-היד התימניים גורסים כמו V125, אבל גירסת M6 מובאת אף היא, בציון "ליש'," בכ"י ת (TCOL).[97] העובדה שכ"י M6 (ו) אינו נציג מובהק של "לישנא אחרינא" היא משמעותית ביותר: בלעדיו הנציגים של "לישנא אחרינא" הם רק כתבי-היד התימניים. כתבי-יד אלו באים מאזור גאוגרפי יחודי, ותלויים זה בזה.

3. בכמה דוגמאות, רוזנטל אינו מוסר את הנוסח של עד אחד בתור נציג של ענף זה או אחר, אלא מעתיק ומשלב כתב-יד אחד ברעהו מבלי להעיר על כך, כפי שראינו בדוגמא 2 לעיל, וכפי שמשתקף בכל הדוגמאות שבהן הביא רוזנטל את ענף "לישנא אחרינא" בכותרת "נוסח עת"[98] – ומבלי לציין להבדלים שביניהם.

4. תיאור רוזנטל בקשר למקומו של רבנו חננאל במסורת הנוסח הוא בעייתי. רוזנטל טוען שגירסאותיו משקפות את ה"לישנא אחרינא." הוא כותב, למשל: "מתוך הקבוצה הזאת עתו מוכח בלי פקפוק, שר"ח נותן לנו בפירושיו הרבה מאוד נוסח מדויק(!) וכלל אינו פרפרסט. היה לפניו נוסח אחד ממשפחה זו. ו [M6][99] כמו גם עת, קרוב מאוד אל נוסח ר"ח."[100] אך רוזנטל אינו נוהג לצטט את רבנו חננאל כשהוא מביא את דוגמאותיו, והמעיין בפירוש רבינו חננאל לעשרים ושלוש הדוגמאות שמביא רוזנטל יגלה שגירסאות רבנו חננאל דווקא נוטות יותר לצד "פסחים שלנו." מתוך עשרים ושלש הדוגמאות, אפשר להכריע חד משמעית כיצד גרס רבנו חננאל בארבעה מקרים בלבד. ובדוגמאות 5 ו-17 ברור שגירסת ר"ח היא כ"לישנא אחרינא," ובדוגמא 10 ו-22 כ"פסחים שלנו." אבל מתוך הדוגמאות שאין לגביהן עדות חד משמעית ברבנו חננאל נראה שהוא גרס כמו "לישנא אחרינא" בדוגמאות 1, ו-8, וכמו פסחים שלנו בדוגמאות 7, 12, 14, ו-23. יוצא שמתוך המדגם שמביא רוזנטל עצמו אין הוכחה שרבנו חננאל נוטה לצד "לישנא אחרינא."[101]

טיב השינויים בכתבי-היד התימניים בפרק "מקום שנהגו"

בחלק הזה נעסוק בדוגמאות מפרקנו בנסיון להצביע על התכונות של כה"י התימניים. דרך הדוגמאות ננסה להעמיד דגם שיכול להסביר מצד אחד את ההוספות הארוכות בכה"י אלה, ומצד שני גם את התופעה של גירסת יסוד שאינה נמצאת בנציגים של הענפים (היינו M6

96 עדות כ"י מינכן 6 חסר בדוגמאות: 1, 2, 3, 5, 9, 12, 17, 18, 20.

97 בכ"י ת (TCOL) בפנים בציון "ליש'," ובכ"י ע (TJTS) על הגליון בלי ציון. וברור לי שהמקור להוספה זו שבכתבי-היד התימניים הוא מספר הערוך הנוטה להביא גירסת שני הענפים. ראה במהדורה, עמ' 44.

98 ראה מה שכתב רוזנטל במאמרו "ששון-לונצר," עמ' 41 הערה 31.

99 אולי רוזנטל מציין ו בנפרד כאן כתוצאה מדברי בעל דקדוקי סופרים, על כתב-יד זה: "ורוב גירסאותיו (של רבנו חננאל – א"ע) מסכימות לגי' הכ"י" (רנ"נ ראבנוביץ, ספר דקדוקי סופרים, הקדמה למסכת ברכות [ירושלים: נדפס מחדש ע"י "אור החכמה," תשס"ב] עמ' 36).

100 "תולדות הנוסח," עמ' 10. בנוסף ראה: "ששון-לונצר," עמ' 6.

101 מבין המקומות שקיים פילוג בין כתבי-היד בפרק "מקום שנהגו," אפשר לקבוע שרבנו חננאל גורס כאחד מן הענפים בארבעים ושנים מקרים, עשרים וארבע פעמים כענף V125 ושמונה עשרה כענף M6. לגבי כלל השינויים מצאתי שבערך שבעים אחוז מגירסאות ר"ח הן כV125.

ברור שלפנינו שתי מגמות: הראשונה השמטת החישוב הסבוך כדי להקל על ההבנה, והשניה להראות במדויק שאלו הם דברי רבא! רבא אמר את דבריו בארמית ולכן קל יותר אם נביא גם את ההוכחה בארמית. זה אפשרי אם נבין שהסיום: „עוביה של רקיע" וכו׳ אינו חלק ממימרת ר׳ יוחנן. רק בכה"י התימניים משפט זה מופיע בארמית, ובהם הוא לא תורגם במדויק. דוגמא זו מהווה לדעתי עוד ראיה להתפתחות מאוחרת בתימן, שהרי בשאר העדים המשפט היא בעברית והוא חלק מדברי ר׳ יוחנן. לפי רוזנטל, בדוגמא זו M6 מצטרף ל„פסחים שלנו"! אבל לפי דברינו M6 הוא הוא הנציג של הענף הנפרד דוקא עקב גירסאות שרוזנטל אינו מציין. בתימן גרסו כמו הענף הזה, אבל פיתחו ועיבדו אותו לנוסח מלא ומוסבר.

עיון במכלול הדוגמאות שמביא רוזנטל לפילוג הענפים, שקצרה ידנו מלהציגו כאן במלואו, מעלה גם את הנקודות הבאות, שעל חלקן עמדנו בדיון בשלוש הדוגמאות דלעיל:

1. במקום להציג את הנתונים לגבי שני ענפים עקביים לאורך מסכת פסחים כולה, כשבכל הדוגמאות עומדים עדי הנוסח העיקריים של הוולגאטה לצד אחד מול עתו,[88] מסתפק רוזנטל בהשוואות ספורות שאינן חד משמעיות, וחלק מהן אף מהוות קשיים לתיאוריה שלו. למשל בדוגמא מספר 22,[89] כ"י ע (TJTS)[90] (הנציג החשוב ביותר לדברי רוזנטל[91] של לישנא אחרינא) גורס כמו „פסחים שלנו," ואילו כ"י ו (M6) עומד לבד כנציג של „לישנא אחרינא"; כלומר, מדובר בדוגמא המתאימה לדגם שלנו, ולא לדגם של רוזנטל! חוסר עקביות זה בא גם לידי ביטוי בכותרות המשתנות המובאות לפני כל דוגמא ודוגמא. נוסח הוולגאטה מכונה לפעמים „נוסח ר," ולפעמים „פסחים שלנו" או „נוסח הוולגאטה," ולעומתו, הענף השני מכונה „עתו," „עת + ו," „עת" או רק „ע."

2. נציגי הלישנא אחרינא עתו (TCOL ,TJTS, וM6) חלוקים ביניהם לעתים קרובות, ואף בדוגמאות המובהקות של רוזנטל אין הוא עקבי בהתיחסותו לשאלה האם M6 משתייך ללישנא אחרינא או לא.[92] מתוך עשרים ושלש הדוגמאות שמביא רוזנטל כעדות לקיום „לישנא אחרינא," מינכן 6 גורס כמו „לישנא אחרינא" (כתבי-היד התימניים) רק בחמש![93] ורק בארבע מתוכן יש הסכמה מוחלטת בין עתו. בארבע דוגמאות מינכן 6 גורס כמו פסחים שלנו,[94] ובשתי דוגמאות הגירסא שבמינכן 6 קרובה יותר לפסחים שלנו מאשר ל„לישנא אחרינא" (כתבי-היד התימניים).[95] בתשע דוגמאות לא שרדה גירסת מינכן 6,

88 פילוג הענפים מוצג על ידי רוזנטל בהערה 30, על יד דוגמא מספר 1, רוזנטל כותב: „לענף הנוסח ,פסחים שלנו' (הוולגאטה), המוצג כאן בדוגמאות מצד ימין, שייכים כתבי-היד אמפקש (א = OX, מ = M95, פ = V134, ק = V109 ו-ש = SAS. רוזנטל אינו נותן בשום מקום במאמר זה [או אחר] מפתח לקיצורים אלו. אך בעבודת הדוקטור שלו מצאתי את פירוט הדברים.) ונוסח הדפוס, ובראשם ר (= כ"י וטיקן 125); לעומת ,לישנא אחרינא' (משמאל), שהיא נוסח כתבי-היד עת + ו (,פסחים שלנו' הוא בדרך-כלל נוסח הדפוס, אלא אם כן פורש אחרת)."

89 „תולדות הנוסח," עמ׳ 21.

90 לא שרד נוסח TCOL כנראה עקב השמטה על ידי הדומות.

91 ראה לעיל, מכתבו שפורסם בספרו של ש׳ מורג, בו כותב רוזנטל: „ולדעתי: אף החשוב (!) ביותר."

92 ראה מה שכתבתי לעיל, התיאוריה של רוזנטל בהתפתחותה, ד"ה „ההבדל העיקרי."

93 דוגמאות: 4, 6, 8, 21, 23.

94 דוגמאות: 10, 11, 15, 16.

95 בקשר לדוגמא 13 בדף סה ע"א, ולדוגמא 14 בדף סט ע"ב, ראה לעיל.

נפשך" וכו' שאינו משאיר ספק באשר להשלכות השונות. נראה שהתפתחות זו שייכת לפעילות בתימן. הגרסנים בתימן פיתחו את הסוגיא על פי הדגם הנפוץ בתלמוד של „מה נפשך."

השינוי הראשון בין V125 וM6 אינו מוזכר כלל אצל רוזנטל. אך השינוי השני מוזכר בתוך סוגרים מרובעים כפולים: „[[בכ"י עת קדם לסיכום: .פשו להו תלתין; ואילו בכ"י ו (בלבד): ,נשתיירו שם שלשים.]]" מתוך הקיצור קשה לעמוד על כוונת הדברים, אבל נראה שהוא מעמיד בפנינו עוד דוגמא של „תרגום." בכה"י התימניים הגירסא היא בארמית ובכ"י M6 בעברית. דברים אלו מופיעים ליד השינוי החשוב (בעיני רוזנטל) בין גירסת כה"י התימניים „אשתכח דסומכה דרקיעא חד משתה בעלמא הוי" ונוסח הוולגאטה „נמצא עוביו של רקיע אחד משׁשה ביום." הרי לפנינו „תרגום" מכל הכיוונים!

אך ברור שהמילים „פשו להו תלתין" שבכה"י התימניים אינן תרגום אלא דברי בעל הסוגיא מדף צג ע"ב. שם מעיר עולא על דברי המשנה „איזו היא דרך רחוקה" וכו': „אמ' עולא מן המודעים לירושלם חמשה עשר מיל סבר לה כי הא דאמ' רבה בר בר חנה אמ' ר' יוחנן כמה מהלך אדם בינוני ביום עשרה פרסאות מעלות השחר ועד הנץ החמה חמשת מילין משקיעת החמה ועד צאת הכוכבים חמשת מילין פשו להו תלתין חמיסר מצפרא לפלגיה דיומא וחמיסר מפלגיה דיומא לאורתא."[83] כאן ברור ש„פשו להו תלתין" וכו' הם דברי בעל הסוגיא ובאים להסביר למה עולא סובר כמו ר' יוחנן (מה שבאמת טעון הסבר).[84] המשפט הזה נמצא בכל כתבי-היד כולל כה"י התימניים בארמית! בקלות אפשר להבין איך המילים „פשו להו תלתין" חזרו לסוף דברי ר' יוחנן גם בדף צד ע"א בנוסח כה"י התמניים. הרי גם שם היחס נקבע על ידי ההשוואה לשלשים (מהנץ החמה לשקיעת החמה) ולא כל היום כולו (ארבעים מיל).[85] ואולי ההעברה היא אחת הגורמים להמשך נוסח כה"י התימניים בדף צד ע"א. אם אנו גורסים בצד ע"א „פשו להו תלתין" לאחר „חמשת מילין," משמע שנגמר דברי ר' יוחנן ומתחילים דברי בעל הסוגיא.[86] לכן מוזר שנחזור לעברית. אך מסרני ענף M6 העדיפו לתרגם „פשו להו תלתין" ולהשאיר דברי ר' יוחנן בלשונם המקורית.

ויש סיבה נוספת ל„תרגום" הזה. הגירסא „נמצא עוביה שלרקיע אחד משׁשה ביום" דורש מן הלומד פעולה כפולה: א. להבין היחס בין שעת הדמדומים והיום (אחד לשש) וב. לחזור לדברי רבא ולהבין שיחס זה מקביל ליחס בין שיעור הרקיע ושיעור העולם. למה לצפות מן הלומד לעשות כל כך הרבה חישובים כאשר אפשר לומר ישירות: „אשתכח דסומכה דרקיע חד משתה בעלמא הוי"? אין זה תרגום מילולי, שהרי היה צריך להיות „ביומא" במקום „בעלמא." אלא ברור שיש כאן דילוג ישר לתוצאה: עוביו של רקיע הוא אחד חלקי שש העולם! עוד יתרון לגירסא זו הוא שהיא קרוֹבה לדברי רבא עצמם. יוצא שאין כאן תרגום במובן הרגיל[87] אלא גרסני כה"י התימניים השתמשו בלשונו של רבא. כך הם שאבו „סומכה דרקיעא" מדברי רבא: „סומכה דרקיעא," „חד משתה" מ„שתה," ו„בעלמא הוי" מ„הוי עלמא."

83 הנוסח הוא לפי כ"י M6.

84 נראה שזו העברה מן הסוגיא בדף צד ע"א ובמקור דברי ר' יוחנן נאמרו שם בקשר ל„עוביו של רקיע."

85 אף רש"י משתמש בביטוי „פשו להו" בפירושו בדף צד ע"א: „וכן משקיעתה ועד צאת הכוכבים ארבע' מילין, פשו להו ל"ב מילין מהנץ החמה ועד שקיעה" וכו' (ד"ה ת"ש ר"י).

86 ראה ש"י פרידמן, „פרק האשה רבה בבבלי, בצירוף מבוא כללי על דרך חקר הסוגיא," מחקרים ומקורות (ב כרכים; ניו-יורק: בית המדרש לרבנים באמריקה, תשל"ח) א:277-441. כותב פרידמן: „כשעברית וארמית משמשות בערבוביה, עיקר ניסוח המימרה הוא העברית, והארמית לשון סתם התלמוד היא" עמ' 301. ובנוסף, ראה: פרידמן, „כרך הנוסח," עמ' 13.

87 התרגום היחיד כאן הוא של המילה „נמצא" ל„אשתכח," זה תרגום מדויק לזמן עבר אבל אין הוא מתאים כל כך לסגנון הבבלי. הביטוי הנפוץ יותר למובן „נמצא ש" וכו' הוא „אלמא."

הקטע מתחיל בקביעה של רבא שהיקף העולם ששת אלפים פרסאות והיקף הרקיע אלף פרסאות. בעל הסוגיא קובע שרבא „סבר לה כי הא דאמר רבה בר בר חנה אמר ר׳ יוחנן." נראה שחלק מן הבעיא בנוסח הסוגיא נובעת מכך שלא ברור מה הם דברי ר׳ יוחנן ומה הם דברי בעל הסוגיא.[80] נראה לי שדבריו של רבי יוחנן כוללים את הסיום: „נמצא עוביה שלרקיע אחד משׁשׁה ביום,"[81] והוא חולק על רבי יהודה שקובע „עוביו של רקיע אחד מעשרה ביום."[82]

מה פירוש הדבר שרבא „סבר לה כי הא" וכו׳? לפי רש"י ורבנו חננאל רבא למד מרבו ש„שיתא אלפי פרסי הוי עלמא," ועל פי דברי ר׳ יוחנן למד ש„סומכא דרקיע אלפא פרסי," שהרי ר׳ יוחנן קבע את היחס 1:6: „נמצא עוביה שלרקיע אחד משׁשׁה ביום." כלומר: היחס בין שעת הדמדומים והיום הוא אחד לשש (בשני הצדדים: בין מעלות השחר עד הנץ החמה, בין משקיעת החמה עד צאת הכוכבים). יחס זה מתאים לדברי רבא בין אם ששת אלפים הוא גמרא, ואלף הוא סברא, ובין אם יש ספק איזה מהם סברא ואיזה גמרא (כפי כ"י M6), נראה שרש"י ורבנו חננאל גרסו כמו כ"י V125 שקבע בפשטות: „חדא גמרא וחדא סברא."

נראה שכה"י התימניים גרסו כמו M6 בקשר להבדל הראשון. אבל נוסח כה"י התימניים מפותח ומובן, ובמקום המשפט הקצר: „ולא ידענא הי גמרא והי סברא" יש לנו הסבר שלם „מה

80 נראה שרבנו חננאל פירש שרבי יוחנן רק אמר: „כמה מהלך אדם ביום עשרה פרסאות," ורבא דייק השאר.

81 אין כאן המקום לדיון ארוך אבל נראה לי שישנה הוכחה לכך שסיום זה הוא חלק מדברי ר׳ יוחנן מירושלמי ברכות (פרק א הלכה א, ב ע"ג). אני מציג את הסוגיא שם על פי כתב-יד ליידן:

> אמ׳ ר׳ חיננא מאיילת השחר עד שיאור המזרח אדם מהלך ארבעת מילין משיאור המזרח עד שתנץ החמה ארבעת מילי ומניין משיאור המזרח עד שתנץ החמה ארבעת מיל דכת׳ וכמו השחר עלה וגו׳ וכת׳ השמש יצא על הארץ ולוט בא צוערה ומן סדום לצוער ארבעת מיל יותר הוון אמ׳ ר׳ זעירא המלאך היה מקדד לפניהן הדרך ומניין מאיילת השחר עד שיאור המזרח ארבעת מיל כמו וכמו מילה מדמיא לחבירתה...
>
> ואתיא דר׳ חייא כר׳ יודה דתני בשם ר׳ יודה עוביו שלרקיע מהלך חמשים שנה אדם בינוני מהלך ארבעים מיל ביום עד שהחמה נוסרת ברקיע מהלך חמשים שנה אדם מהלך ארבעת מיל נמצאת או׳ שעוביו שלרקיע אחד מעשרה ביום וכשם שעוביו שלרקיע מהלך חמשים שנה כך עוביה שלארץ ועוביו שלתהום מהלך חמשים שנה.

ברור כאן שדברי ר׳ יודה כוללים את המשפט „נמצאת או׳ שעוביו שלרקיע אחד מעשרה ביום" וכן הוא גם מתוך דברי הבבלי כאן: „מותיבי ר׳ יהודה או׳ עוביה של רקיע אחד מעשרה ביום תדע שכמה מהלך אדם בינוני ביום עשרה פרסאות מעלות השחר ועד הנץ החמה ארבעת מילין משקיעת החמה ועד צאת הכוכבים ארבעת מילין נמצא עביה של רקיע אחד מעשרה ביום." אם לרבי יהודה יש קשר בין „כמה מהלך אדם בינוני ביום" ו„עוביו של רקיע" מסתבר שגם בדברי ר׳ יוחנן יש קשר. עוד ראיה לכך הוא נוסח רוב כתבי-היד בבבלי כאן. בכ"י V134: „דא׳ רבה בר בר חנה א"ר יוחנן כמה מהלך אדם בינוני ביום עשרה פרסאות מעלות השחר ועד הנץ החמה חמשת מילין משקיעת החמה עד צאת הכוכבים חמש מילין נמצא עוביה של רקעי אחד משׁשׁה ביום." בכ"י OX: „דאמ׳ רבה בר בר חנה א"ר יוחנן כמה מהלך אדם בינוני ביום עשר פרסאות מעלות השחר ועד הנץ החמה חמשת מילין משקיעת החמה ועד צאת הכוכבים חמשת מילין נמצא עביו של רקיע אחד משׁשׁה ביום." בכ"י V109: „דאמ׳ רבה בר בר חנה אמ׳ ר׳ יוחנן כמה מהלך אדם ביום עשרה פרסאות מעלות השחר ועד הנץ החמה חמשת מילין נמצא עוביה של רקיע אחד משׁשׁה ביום." ונראה שבכ"י V109 יש השמטה על ידי הדומות „חמשת מילין." בכל כתבי-היד מימרת ר׳ יוחנן נמצאת בשלימותה בעברית. נכון הוא שבסוגיא בדף צג ע"ב לא נמצא הסיום: „נמצא עוביה" וכו׳. אבל לדעתי מימרת ר׳ יוחנן הועברה לשם והסיום אינו שייך לעניין. וראה להלן.

82 מוקד המחלקות בבבלי הוא כמה אדם בינוני הולך בשעת הדמדומים. לפי ר׳ יוחנן חמשה מילין (רבנו חננאל מפרש שאין זה ר׳ יוחנן שאומר כך אלא דיוקו של רבה) ולפי ר׳ יהודה ארבעה מילין. אבל בירושלמי יש חשבון אחר לשיטת ר׳ יהודה.

במבט ראשון נוסח עת נראה מקורי כאן. מדוע לסבך משפט פשוט כל כך בעברית ולתרגמו לארמית? אך טרם נקבע מסקנות עלינו לעמוד על ההקשר המלא בסוגיא שם:

V125	*TJTS*	*M6*
אמ׳ רבא שיתא אלפי פרסי הוי עלמא וסומכא דרקיעא <..>לפא פרסי חדא גמרא וחדא סברא	אמ׳ רבא שתה אלפי פרסי הוי עלמא וסומכה[74] דרקיעא אלפא דפרסי חדא מניהי גמרא וחדא סברא[75]	אמ׳ רבה שיתא אלפי פרסי הוי עלמא וסומכה דרקיעא אלפא פרסי חדא גמרא וחדא סברא ולא ידענא הי גמרא והי סברא
	מה נפשך או שתה אלפי פרסי הוי עלמא גמרא סומכא דרקיעא אלפא דפרסי סברא הוא או סומכה דרקיעא אלפא דפרסי גמרא הוא שתה אלפי פרסי הוי עלמא סברא הוא	
סבר לה כי הא דאמ׳ רבה בר בר חנה אמ׳ ר׳ יוחנן כמה מהלך אדם בינוני ביום עשר פרסאות מעלות השחר ועד הנץ החמה חמשה מילין משקיעת החמה ועד צאת הכוכבים חמשה מילין	סבר לה כי הא דאמר רבא בר בר חנה אמ׳ ר׳ יוחנן כמה מהלך אדם בינוני ביום עשרה פרסאות מעלות השחר ועד הנץ החמה חמשת מילין משקיעת החמה ועד צאת הכוכבים חמשת מילין	סבר לה כי הא דאמ׳ רבה בר בר חנה אמ׳ ר׳ יוחנן כמה מהלך אדם בינוני ביום עשרה פרסאות מעלות השחר ועד הנץ החמה חמשת מילין משקיעת החמה ועד צאת הכוכבים חמשת מילין
	פשו להו תלתין	נשתיירו שם שלשים
נמצא עוביה שלרקיע אחד משׁשה ביום	אשתכח דסומכה[76] דרקיעא חד משתה בעלמא הוי	נמצא עוביה של רקיע אחד משׁשה ביום

כאשר כל הסוגיא מונחת לפנינו, ברור שהנוסח שבכה״י התימניים הוא המפותח יותר. ולאחר העיון מתברר שאין מדובר במעשה „תרגום״ כלל אלא במעשה העתקה ועיבוד. הנוסח שבסוף: „סומכה דרקיע״ וכו׳ וההוספה „פשו להו תלתין,״ שניהם לשון התלמוד הם! ונראה ש„התרגום״ מעברית לארמית בסוף הקטע מיועד לעזור ללומד להבין את ההוכחה לדברי רבא[77] (ולמעשה כולל דברי רבא עצמו)!

נראה לי שהפילוג לענפים במקרה זה הוא בין V125 וM6. ישנם שני שינויים ביניהם:

א. ענף M6 מוסיף: „ולא ידענא הי גמרא והי סברא,״ משפט שאינו נמצא בכ״י V125.[78]

ב. ענף M6 מוסיף את המילים: „נשתיירו שם שלשים,״ החסרות בV125.[79]

74 בכ״י TCOL: „וסמכיה.״
75 בכ״י TCOL: „חדא מיניהו גמירי וחדא סבירא.״
76 בכ״י TCOL: „פשו להון תלתין אשתכח דסומכיה״ וכו׳.
77 כך הוא בV109, V134, TCOL, TJTS, V125, וOX.
78 גם בכ״י V109, כ״י OX, וכ״י V134 הוא חסר.
79 וכן בV109, OX וV134.

שלפנינו, שהרי בהעדר אחד משלשת הדברים בלבד (שבת או טומאה או מרובה) „אין מביאין עמו חגיגה," ואין צורך ב„כולהו," ולכן רוזנטל פירש לשון „וכוליה."

על כל פנים, הכללת הסיפא של המשנה בסוגיא בדרך זו או אחרת היא ודאי התפתחות מאוחרת, וכפי שמעידה גירסת דפוס ונציה. דפוס ונציה גורס: „ובהך סיפא נמי קתני אין מביאין." אבל הוספה זו אין יסודה בגירסא תלמודית כל שהיא, אלא הוכנסה מפירוש רש"י על אתר. רש"י מפרש (בד"ה „תנא הרכבתו"): „וקאמר נמי בהך סיפא אימתי מביאין כו' ואשמעינן דחגיגה נמי לא דחיא שבת אפילו שחיטה דילה." וברור שה„סיפא" של רש"י אינו ה„סיפא" שלנו (שהוא הסיפא של משנה ג „אין מביאין"), אלא כוונתו לכל משנה ג' (לעומת משנה א' שהיא ה„רישא" של רש"י); שהרי הוא כותב: „אימתי מביאין" כו'. ובטעות חשבו שהכוונה ל„סיפא" שלנו, „אין מביאין," ופירוש זה צורף לתלמוד בעקבות רש"י.[70]

חוץ מן השינוי הבולט „חגיגה מן אדכר שמה" יש עוד פישוט ועיבוד בקטע זה בכה"י התימניים. במקום הסגנון הארוך „איידי דתנא... וקא אמ' נמי/תנא נמי..." (ובכ"י M6 גם „והכי קאמר"), בכה"י התימניים כתוב בפשטות: „משום דקתני... אמר נמי"; כלומר: למה כתוב כאן „חגיגה"? משום שלעיל כבר מוזכר ש„הרכבתו והבאתו מחוץ" [של הפסח] אינו דוחה את השבת, ולכן מוזכר גם כאן שהחגיגה אינה דוחה את השבת. בכה"י התימניים המונחים „משום דקתני" ו„אמר נמי" מקשרים בין שתי המשניות בלא התערבות של בעל הסוגיא. סגנון זה פשוט ומובן יותר,[71] ונראית לי מאוחר ומשני (*lectio facilior*).

דוגמא 3 (פסחים צד ע"א). כאמור לעיל, מן התאור של רוזנטל אפשר להתרשם שהתופעה של „לישנא אחרינא" הינה גדולה ומורחבת כל כך שאי אפשר להטיל בה ספק. כך גם לגבי הקטגוריה של רוזנטל: חילופי שפות. רוזנטל מקדים לדוגמאות 9, 10 ו–11 את התאור הבא: „ישנן גם חילופי 'לשונות' (היינו שפות) ממש. פעמים מה שמסורת הוולגאטה מציעה עברית, מציעה המסורת האחרת ארמית, פעמים להיפך." ברור שעיקר החידוש כאן הוא התופעה הראשונה, שהרי ידוע וברור שיש נטייה של גרסנים (ובמיוחד המאוחרים שבהם) לתרגם מארמית לעברית.[72] מה עומד מאחרי „פעמים" אלו ש„לישנא אחרינא" מביא גירסא בארמית במקום בעברית? רוזנטל מביא רק דוגמא אחת (דף צד ע"א).[73] כך הוא רושם את הדברים:

נוסח הוולגאטה+ו	נוסח עות
נמצא עוביו של רקיע אחד משׁשה ביום.	אשתכח דסומכה דרקיעא חד משתה בעלמא הוי.

שהגירסא בכה"י התימניים יסודה בטעות, שהרי אם כוונת הסופרים היתה לציין את הסיפא של המשנה, אזי קל יותר היה להעתיק אותה במלואה, שהרי מדובר בחמש מילים בלבד.

70 דברי רש"י עברו עריכה והתאמה שהרי במקום דבריו: „וקאמר נמי בהך סיפא אימתי מביאין" כתוב: „וקאמ' בהך סיפא נמי אין מביאין."

71 פשוט יותר הוא כי הוא מתרגם המונח „איידי דתנא" ל„משום דקתני," ובמקום שני מונחים (לפחות בM6) „תנא נמי" ו„הכי קאמר," כתוב בפשטות: „אמר נמי." גם אין צורך להעתיק „דלא דחו שבת תנא נמי חגיגה דלא דחיא שבת" כאשר אפשר להעתיק עוד ארבעה מילים במשנה הראשונה עצמה ואין צורך לדברי בעל הסוגיא.

72 כן הוא בדוגמאות 9 ו–11 וראוי להדגיש שבשני מקרים אלה התרגום לעברית הוא תופעה תימנית בלבד! בדוגמא 9 התרגום לעברית קיים רק בכ"י TJTS כי לא שרדו נוסח כ"י M6 וTCOL להתחלת המסכת. בדוגמא 11 כ"י M6 גורס כמו „פסחים שלנו," ואין זה תמוה, כי מעשה התרגום שייך לדעתי על פי רוב לשלב מאוחר בהתפתחות הנוסח.

73 מספר 10, „תולדות הנוסח," עמ' 14–15.

נראה שאפשר לייחס את השינויים במשפט הראשון לכך שהביטוי „מאי תנא דקתני" אינו נפוץ בתלמוד[61] ואינו ברור כל הצורך.[62] ההבדל הראשון בין V125 (שנא) וM6 (תנא) ראוי לדיון. לפי נוסח V125 צריך לפרש: מה (הטעם שהתנא) נשתנה ושנה „חגיגה"? ואילו לפי M6: „תנא" במובן „שנה" – „לימד": מה (הטעם שהתנא) לימד „חגיגה"? הסגנון „מאי שנא" נפוץ ומובן יותר בהקשר זה, ונראה שהנוסח „מאי תנא" פותח לגירסא מובנת יותר: „מאן תנא דקתני." סימוכין לכך ניתן להביא מכ"י מינכן 95 שגורס כאן „מאן תנ' דקתני חגיגה."[63] נראה שהנוסח שבכה"י התימניים משקף פיתוח של אותו נוסח „מאן תנא דקתני,"[64] שמסרני התימניים פיתחו והחליפו במרוצת הזמנים ל„חגיגה מן אדכר[65] שמה." וסביר להניח ששינוי זה משקף פעילות מאוחרת בתימן.

באשר לשינוי השני (המסומן ב' לעיל), כ"י V109, כ"י V134, וכ"י M95 גורסים[66] כמו כ"י V125 אבל נראה שנוסח הדפוס מבוסס על כ"י M6 שהרי במקום „תנא נמי" כתוב יותר בפשטות: „וקתני נמי." בקשר להוספות: רוב כתבי-היד אינם גורסים ההוספה „והכי קאמ'" כמו V125, אבל בדפוס הוספה זו נמצאת, כמו בגירסת M6.

ראוי לשים לב להוספה האחרונה הנמצאת בכ"י M6 (השינוי המסומן ד' לעיל). רוב כה"י מצטטים רק את הרישא של המשנה (פרק ו משנה ג):[67] „אימתי מביאים עמו חגיגה בזמן שהוא [בא] בחול בטהרה ובממועט," [68] אבל בכ"י M6 גם הסיפא מצוטטת: „בזמן שבא בשבת או במרובה או בטומאה אין מביאין עמו חגיגה." ובאמת הסיפא היא העיקר שהרי בה מוזכר שהחגיגה, כמו „הרכבתו והבאתו" של הפסח (שמוזכר במשנה א), אינה דוחה את השבת. ודוקא בהקשר זה מתקרבים כה"י התימניים לנוסח M6; הם גורסים: „כולהו אין מביאין עמו חגיגה." רוזנטל קובע: „כולהו (= וכו', היינו העיקר: ובזמן שבא בשבת)." אומנם „כולהו" פירושו בדרך כלל „כולם,"[69] אבל הפירוש הרגיל „כולם" אינו מתאים להקשר

61 בתלמוד הנדפס: עירובין כג ע"א, גיטין מו ע"א ועד ע"ב, סנהדרין נ̇ב ע"א, ובכורות מ ע"א. בדפוס בסוטה ב ע"א: „מאי תנא דקא תנא." השווה בבלי שבועות ב ע"ב „מאי שנא דתני." וראה הדיון של א' רייזנר בסוגיא האחרונה בדיסרטציה שלו: „על התהוות הסוגיא: מסכת שבועות מן התלמוד הבבלי – פרק ראשון" (עבודה לשם קבלת תואר דוקטור לפילוסופיה; ניו יורק: בית המדרש לרבנים באמריקה, תשנ"ו) עמ' 90-93.

62 זה מסביר גם את ריבוי חילופי הנוסחאות במקומות אחרים, ראה דקדוקי סופרים עירובין דף כג ע"א, אות כ, עמ' 84, וסנהדרין נב ע"א, אות פ, עמ' 151. וראה הדיון של רייזנר הנ"ל.

63 נראה שרבנו חננאל גם גרס „מאן תנא" שהרי הוא מסביר: „אקשינן מאן תנא דקתני ,אימתי' ופרקינן איידי דתנא" וכו' (מהד' ד' מצגר; ירושלים: הוצאת מכון „לב שמח," תשנ"א, עמ' קנו). וראה המשך פירושו שם. וראה פירוש רבינו יהונתן מלוניל (מהד' ש"א שטרן; בני ברק: מכון מעין התורה, תשמ"ב, עמ' ריד): „ובגמרא בעי מאן תנא חגיגה."

64 עוד סיוע לכך ניתן להביא מבבלי גיטין מו ע"א. בדפוסים שם גורסים: „מאי תנא דקתני מעשה, חסורי מיחסרא והכי קתני" וכו', אבל בשני כתבי היד (מינכן 95 ואוקספורד 368) ובריי"ף גורסים „מאן" במקום „מאי." ראה מ"ש פלדבלום, דקדוקי סופרים, מסכת גיטין (ניו-יורק: הוצאת „חורב," ישיבה אוניברסיטה, תשכ"ו) מו ע"א. ובמיוחד ההערה לשורה 40. גם בסוגיא בהמשך בדף עד ע"ב (בדפוס וילנא): „מאי תנא דקתני מעשה," ובכ"י וטיקן 140 וקטע גניזה „מאן תנא" וכו'. ראה: פלדבלום שורה 10, שם.

65 הוא הצורה הרגילה (אפעל) בכה"י התימניים. ראה אצל רוזנטל „תולדות הנוסח" דוגמא 11, עמ' 15: בנוסח הוולגאטה „מאן דכר שמיה," ואילו בכה"י התימניים: „איניש אידכר שמיה."

66 בכ"י מינכן 95 כתוב: „דקאמ' נמי."

67 הנוסח כאן לפי כ"י קויפמן.

68 כן הוא בכ"י V134, V109, וM95.

69 לא מצאתי עוד דוגמא של השימוש ב„כולהו" כ„וכוליה" בציטוטים בכתבי יד של הבבלי. נראה לי

V125	דפוס ונציה	M6
<...> ואימתי מביאין עמו חגיגה בזמן שהוא בא בחול בטהרה ובממועט.[55]	חגיגה דלא דחיא שבת והכי קאמר אימתי מביאין עמו חגיגה בזמן שהוא בא בחול בטהרה וקאמ׳ בהך סיפא נמי אין מביאין.	חגיגה דלא דחיא שבת והכי קאמ׳ אימתי מביאין עמו חגיגה בזמן שבא בחול בטהרה ובמועט בזמן שבא בשבת או במרובה או בטומאה אין מביאין עמו חגיגה.

ישנם הבדלים חשובים בין כ״י V125 (ר) ונוסח הדפוסים. בדפוסים: „מאי תנא דקתני חגיגה תנא הרכבתו״ וכו׳ ואילו בנוסח כ״י V125: „מאי שנא דקא <.. ...> חגיגה איידי דתנא.״ רוזנטל בוחר לרשום „איידי דקתני״ כמו V125, אך אין הוא מעיר על הגירסא „מאי שנא״ שבתחילת הקטע בכ״י V125! וכן בהמשך בדפוסים: „וקתני נמי חגיגה דלא״ וכו׳, ואילו בV125: „וקא אמ׳ נמי וחגיגה דלא״ וכו׳, רוזנטל רושם כמו V125. מיד אחר כך רושם רוזנטל: „והכי קאמ׳: ואימתי״ וכו׳ אבל גירסא זו אינה אלא לפי נוסח הדפוסים! ברור שכ״י V125 אינו גורס „והכי קאמ׳,״ שהרי אחרי המילים „וחגיגה דלא <...>,״ שנכתבו לקראת סוף השורה, אין מספיק מקום למילים „דחיא שבת והכי קאמ׳,״ והשורה הבאה פותחת „ואימתי.״ נראה שכ״י וטיקן 125 גרס „וחגיגה דלא דחיא שבת ואימתי,״ כמו שלשה עדי נוסח נוספים.[56] יש גם צורך לציין באיזה דפוס מדובר, שהרי, כפי שרשמנו, בסוף הקטע בדפוס ונציה יש תוספת מעין נוסח כה״י התימניים: „והכי קאמר אימתי מביאין עמו חגיגה בזמן שהוא בא בחול בטהרה וקאמ׳ בהך סיפא נמי אין מביאין.״[57] על כל השינויים האלו רוזנטל עובר בשתיקה.[58]

נראה שפילוג הענפים כאן הוא בין V125 וM6. יש ארבעה פילוגים (שני הראשונים שינויים בגוף הנוסח, ושני האחרונים הוספות באחד הענפים):

א. בכ״י V125: „מאי שנא״ וכו׳, ואילו בכ״י M6: „מאי תנא״[59] וכו׳.[60]

ב. בכ״י V125: „וקא אמ׳ נמי,״ ואילו בכ״י M6: „תנא נמי.״

ג. בכ״י V125 חסר: „והכי קאמ׳״ ובכ״י M6 ישנו.

ד. בכ״י V125 חסרה הסיפא של המשנה: „בזמן שבא בשבת״ וכו׳, והיא ישנה בכ״י M6.

55 כן הוא „ובממועט,״ בכ״י קויפמן (פרק ו׳ משנה ג׳).

56 כך גורסים כ״י V109, V134, וM95: „דלא דחיא שבת ואימתי״ וכו׳.

57 ראה דקדוקי סופרים, אות ס, עמ׳ 208, „בד׳ הישנים עד לובלין שפ״ו בחול בטהרה [וקאמר בהך סיפא נמי אין מביאין] ומחקו המהרש״ל בדפוס הראשון מפני שזה הובא בפנים מגי׳ רש״י.״ וראה להלן.

58 אומנם במאמרו „ששון-לונצר,״ במסגרת דיון בדוגמא אחרת ציין רוזנטל בדרך אגב את הגירסא „מאי שנא״ שבכ״י וטיקן 125. ראה שם, עמ׳ 29 הערה 30.

59 כן הוא בכ״י V109, וכ״י V134.

60 מצאתי החילוף בין „שנא״ ו„תנא״ גם בבבלי סוטה ב ע״א (ראה: „דקדוקי סופרים השלם,״ עמ׳ ג): בכ״י ר (כ״י רומי 110–111; 130) כתוב: „מאי שנא דקתני״ (ראה: הערה 26, שם), ואילו בכ״י מ ו-ו (מ = מינכן 95, ו = דפוס ונציה) „מאי תנא דקתני.״

סגיא דלאו הכי" אינו ברור למי שאינו מכירו, היות והמילה „סגיא" יש לה שני פירושים נפוצים.[51] לכן הגרסנים התימניים תרגמו את המונח לעברית, „אפשר" והענין ברור מיד. גם בברייתא שבהמשך ישנו פישוט הלשון. במקום „שבניו" גורס כ"י TJTS: „שזרעו." אבל בכ"י TCOL: „שבניו" כמו בשאר עדי הנוסח. אף שינוי זה בא להקל על הלומד ולהסביר שהמונח „בניו" מתכוון ל„ילדיו" (בנים ובנות). אבל שינוי זה נעשה רק בכתב-יד אחד מתימן ונראה שמדובר בשינוי שנעשה בתימן.

לסיכום: נוסח כה"י התימניים במקרה זה יש לו את כל הסימנים של נוסח מאוחר ומעורב. בקטע זה ישנם ארבעה פילוגים, ובשלשה מהם כה"י התימניים גורסים כV125. בנוסף ישנו פישוט לשון: „סגיא" > „אפשר," ובTJTS: „שבניו" > „שזרעו." שני השינויים נראים כפיתוח מאוחר שאינו שייך לפילוג הענפים.[52]

דוגמא 2 (פסחים סט ע"ב). בדוגמא 14[53] (דף סט ע"ב) רוזנטל מדגים פילוג בין „נוסח ר + דפוס" ו„נוסח עת." כך הוא רושם את הפילוג:

נוסח ר + דפוס	נוסח עת
מאי תנא דקתני חגיגה?	חגיגה מן אדכר שמה?
איידי דתנא: הרכיבו והבאתו	משום דקתני: הרכיבו והבאתו
מחוץ לתחום דלא דחו שבת –	מחוץ לתחום וחתיכת יבלתו אינן דוחין
וקא אמ' נמי חגיגה דלא דחיא שבת,	אמר נמי:
והכי קאמ': ואימתי מביאין עמו	ואימתי מביאין עמו
חגיגה בזמן שהוא בא בחול	חגיגה, בזמן שבא בחול
בטהרה ובממועט.	בטהרה ובמועט
	כולהו (= וכו', היינו העיקר: ובזמן שבא בשבת)
	אין מביאין עמו חגיגה:

הצגתו של רוזנטל בדוגמא זו חסרה וצריכה תיקון. בקטע קצר זה יש לנו הרבה שינויים והתפתחויות! מה שרוזנטל מכנה „נוסח ר + דפוס" הוא למעשה שילוב שתי הנוסחאות, ומשום מה, רוזנטל אינו מזכיר את גירסת כ"י M6 (ו) כאן.[54] ואם יטעון הטוען שרוזנטל מעתיק את נוסח וטיקן 125 (ר) ומשלב את נוסח הדפוס רק במקומות שאי אפשר לקרוא כתב היד, הריני מציג במלואן את הגירסאות של כ"י וטיקן 125, דפוס ונציה, וכ"י מינכן 6:

V125	דפוס ונציה	*M6*
מאי שנא דקא <.. ...> חגיגה	מאי תנא דקתני חגיגה	מאי תנא דקתני חגיגה
איידי דתנא הרכיבו והבאתו	תנא הרכבו והבאתו	אידי דתנא הרכיבו והבאתו
מחוץ לתחום דלא דחו שבת	דלא דחי שבת	מחוץ דלא דחו שבת
וקא אמ' נמי וחגיגה דלא	וקתני נמי	תנא נמי

המשך בעמוד הבא

51 כדברי קוהוט בערוך השלם (וינה: הוצאת מנורה, תרפ"ו) ערך סג V (כרך ו', עמ' 16) „פי' די ואפשר."
52 ראה לעיל, ענפי הנוסח של פרק „מקום שנהגו," הגדרתי ל„גירסא משנית."
53 „תולדות הנוסח," עמ' 16.
54 נראה שהסיבה לכך היא שבהשוואה לנוסח כה"י התימניים, כ"י מינכן 6 קרוב יותר במקרה זה לפסחים שלנו שמציג רוזנטל.

אם ניקח בחשבון את כל החילופים בקטע, נראה שTJTS (ע),[47] דוקא מסכים יותר עם V125 (ר) מאשר עם M6 (ו) וזה לשונו בהשוואה לנוסח דפוס ונציה:

TJTS	*VEN*
תנא היא היתה נקראת כת עצלנית.	תנא היא נקראת כת עצלנית.
והא לא אפשר דלאו הכי	והא לא סגיא דלאו הכי
	מאי הוי ליה למיעבד
אפילו הכי איבעי להו לזרוזי נפשיהו	א"ה איבעי להו לזרוזי נפשיה
כדתניא אי אפשר לעולם בלא זכרים ובלא נקיבות אשרי מי שזרעו[48] זכרים אוי לו למי שזרעו נקיבות	כדתניא ר' אר' אי אפש' לעולם בלא בסם ובלא בורסי אשרי מי שאומנתו בסם אוי לו מי שאומנתו בורסי
ואי אפשר לעולם בלא בורסי ובלי בסם[49] אשרי מי שאומנותו בסם אוי לו למי שאומנותו בורסי.	ואי אפשר לעולם בלא זכרים ובלא נקבות אשרי מי שבניו זכרים אוי לו מי שבניו נקבות.

מתוך ארבעת הפילוגים בין הענפים לשיטתנו (V125 וM6), TJTS (ע) גורס כמו V125 בשלשה מהם (א,ג,ד), ואילו הדפוס (המשתייך לפי רוזנטל לוולגאטה), גורס ככ"י M6 בשלשה מקרים אלו, ואף גורס את „הרחבת-הלשון" שרזונטל מייחס לענף עתו! ובאשר ל„הרחבת-הלשון" נראה שהדברים אינם כה פשוטים כפי שמוסר רוזנטל. ברור שלפנינו הרחבת-לשון, אך הרחבת-לשון זו משנה גם את פירוש הסוגיא.

נראה שהנוסח המקורי הוא ככ"י V125. שם השאלה היא קצרה ופשוטה: „מאי הוה להו למיעבד" כלומר בסופו של דבר הכת עשתה מצוה ולעולם יהיו אלה השוחטים אחרונים. לגירסא זו, נראה שאין תשובה לשאלה, מדובר בשאלה רטורית. ואין הברייתא באה לענות על השאלה אלא לחזק אותה. כשם ש„אי אפשר לעולם" בלי זכרים ונקיבות, בשם ובורסי, כן אי אפשר בלא אלה ששוחטין פסחיהם אחרונים. הדגש הוא על כך שמדובר במצב טבעי.[50] אך לפי נוסח M6 יש לפנינו שאלה ותשובה, והברייתא מובאת כדי לחזק את התשובה. השאלה היא: „והא לא סגיא דלאו הכי," כלומר: במה הם אשמים? והתשובה היא: „אפלו הכי איבעי להו לזרוזי נפשיהו"! הם היו צריכים להזדרז ולנסות להגיע מוקדם ככל האפשר. הברייתא מובאת בנוסח זה, כדי לחזק את הביקורת נגד אלו שהגיעו אחרון ובאותו זמן לשבח את אלו שהגיעו ראשון. כשם שמשבחים את הזכרים ואת הבשם למרות שהאחרים לא חטאו, כך יש לברך את הזריזים, ואין פגם בכינוי האחרונים „כת עצלנית." הנוסח של „עת + ו" שרוזנטל מביא להדגמת הפילוג איננו אלא גירסת עת (TJTS וTCOL), שהרי M6 אינו גורס „היתה," ובמקום „אי אפשר" גורס בM6: „רבי אר' אי אפשר." ובנוסף לכך, אף על פי שכה"י התימניים גורסים כמו M6 בקשר להרחבת-הלשון, הגירסא שלהם מפותחת יותר. הביטוי „והא לא

47 אני משתמש בכ"י TJTS לצורך ההשוואה, ומביא בהערות שינויים מTCOL, כשיש הבדלים משמעותיים.

48 בכ"י TCOL: „שבניו" בשני המקרים.

49 בכ"י TCOL: „בלא בשם."

50 נראה שפירוש זה מסביר גם את שינוי סדר הפרטים בברייתא. בכ"י V125 מצב הטבעי מודגש על ידי הקדמת „זכרים ונקיבות" ל„בשם ובורסי," בכ"י M6 הביקורת נגד הכת השלישית מודגשת על ידי הקדמת „בשם ובורסי" שהן מקצועות שאפשר להחליפן. אפשר לטעון ש„מאי הוה להו למיעבד" הוא שאלה, והברייתא משמשת תשובה. נראה שכך הבין רוזנטל. אך אין הברייתא עונה על השאלה. היא מדגישה דוקא את העובדה שלעולם יהיו אנשים בעלי מעמד נחות, גם אם אינם אשמים בכך.

דוגמא 1 (פסחים סה ע"א). בדוגמא 13 (דף סה ע"א) רוזנטל מדגים „תוספות והרחבות-לשון," כך הוא רושם את הפילוג:

נוסח ד	נוסח עת+1
תנא: היא היתה נקראת כת עצלנית.	תנא: היא היתה נקראת כת עצלנית.
מאי הוה להו למיעבד?	והא לא אפשר דלאו הכי?!
	אפלו הכי איבעי להו לזרוזי נפשיהו.
כדתניא: אי אפשר לעולם וכו׳	כדתניא: אי אפשר לעולם וכו׳

חסרים הרבה פרטים חשובים בדוגמא זו, ונביא אותם אחד אחד. אפשר להתרשם שכל שלשת הנציגים של ענף עתו גירסתם זהה בקטע קטן זה. אבל אין הדבר כן. להלן הגירסאות המלאות. אביא קודם את הגירסאות של V125 וM6:

V125	M6
תנא היא היתה נקראת כת עצלנית	תנא והיא נקרית כת עצלנית
מאי הוה להו למיעבד	והא לא סגיא דלאו הכי
	אפלו הכי איבעי להו לזרוזי נפשיהו
כדתניא אי אפשר לעולם בלא זכרים ובלא	כדתניא רבי אר׳ אי אפשר לעולם בלא בשם
נקיבות אשרי מי שבניו זכרים ואוי לו למי	ובלא בורסי אשרי מי שאומנותו בשם ואוי לו
שבניו נקיבות ואי אפשר לעולם בלא בשם	למי שאומנותו בורסי ואי אפשר לעולם בלא
ובלא בורסי אשרי מי שאומניתו[42] בשם ואוי לו	זכרים ובלא נקבות אשרי מי שבניו זכרים ואוי
למי שאומנותו בורסי.	לו למי שבניו נקבות.

לשיטתנו,[43] הפילוג בקטע זה הוא בין V125 וM6. הם חלוקים בארבעה פרטים עיקרים:

א. בגירסת הברייתא, V125 גורס „היא היתה נקראת"[44] אך בכ"י M6 הגירסא היא: „והיא נקראת."

ב. כ"י V125 גורס רק את המילים „מאי הוה להו למיעבד," אך בכ"י M6 יש כבר שאלה ותשובה: „והא לא סגיא דלאו הכי? אפלו הכי איבעי להו לזרוזי נפשיהו."[45]

ג. הברייתא השניה פותחת לפי V125: „אי אפשר" וכו׳, ואילו בM6 הדברים מובאים בשמו של רבי: „רבי אר׳ אי אפשר"[46] וכו׳.

ד. סדר הפרטים בברייתא שונה: בV125: זכרים – נקיבות, בשם – בורסי, ובM6 הסדר הפוך: בשם – בורסי, זכרים – נקיבות.

42 נראה לי שרשום „שאומניתו" אבל אולי החלק התחתון של הוא"ו נמחק.
43 כוונתי היא שדוגמא זו מתאימה לממצאים של פרק „מקום שנהגו" בו הפילוג הוא בין V125 וM6.
44 כן הוא הגירסא בכל עדי הנוסח של התוספתא, ראה מה׳ ליברמן עמ׳ 164 שו׳ 69-70.
45 רוזנטל הדגיש רק השינוי הזה, ראה להלן.
46 נראה ש„רבי אר׳" הוא הוספה על פי הסוגיא בקדושין פב ע"ב.

מהדורה בת-ימינו.[36] כמו כן אופי כתבי היד התימניים בבבלי סוכה (אוקספורד 2677 וכ״י בית המדרש לרבנים, ענאלו 270) נראה במבט ראשון שונה לחלוטין מן האופי בפסחים. ברור שנצטרך להמתין למסקנות סופיות בעניין זה עד לבדיקה יסודית של כל כתבי היד התימניים בבבלי כולו.

שיטת רוזנטל בעניין „לישנא אחרינא"

עובי הקורה של התיאוריה של רוזנטל לגבי התפלגות עדי הנוסח הוא, כאמור לעיל, ש„לישנא אחרינא" איננו עריכה שונה של התלמוד וגם איננו נוסח ששובש על ידי סופרים ומעתיקים. לדעתו, לפנינו במסכת זו שני טיפוסים של נוסח, שעל פי רוב כמעט זהים בפירושם ובמובנם; ההבדל בא לידי ביטוי בלשון בלבד. מבין כל מאמריו על נוסח מסכת פסחים, המאמר המרכזי המציג את החומר הרב ביותר הוא מאמרו „תולדות הנוסח."[37]

רוזנטל מביא שמונה סוגים שונים של הבדלים בין הנוסח הרווח ולישנא אחרינא.[38] המגוון הזה יוצר את הרושם שמדובר בתופעה רחבת-היקף שאין להטיל בה ספק. על פי רוב ההבדלים שמדגים רוזנטל הם מצומצמים. אין מדובר בשינוי סדר האלמנטים שבסוגיא, אבל מאידך, השינויים אינם בשקלא וטריא של הסוגיא בלבד, אלא גם במימרות ובברייתות. דוגמא של הבדלים בשקלא וטריא היא דוגמא 3.[39] בנוסח הרווח: „מכדי בין לרבי יהודה ובין לר' מאיר חמץ אינו אסור אלא משש שעות ולמעלה," ואילו בכתב-יד TJTS: „מכדי בין לר' מאיר בין לר' יהודה עד שש שעות לא מיתסר." דוגמא לשינוי בברייתא היא דוגמא 16[40] בפסחים שלנו: „ובא זונין ממונה של ר"ג ואמר הגיע עת לבער את החמץ," ואילו בכתבי-היד התימניים (לישנא אחרינא): „ובא זונן ממונה שלבית רבן גמליאל ואמ' עמדו לבתיכם[41] הגיעה שעת הביעור." הדוגמאות משכנעות לכאורה, מפני שבשני המקרים הכוונה והפירוש זהים, והפילוג הוא בלשון בלבד, אבל מאידך אין המדובר בטעות סופר. הרי לפנינו לישנא אחרינא!

נעיין תחילה בשלוש מן הדוגמאות שמביא רוזנטל לתיעוד פילוג הענפים בבבלי פסחים במאמרו „תולדות הנוסח," ולאחר מכן נעמוד על כמה תופעות כלליות בדוגמאות שמביא רוזנטל.

36 ד' גולינקין, „פרק יום טוב של ראש השנה (חלק ב'): מהדורה מדעית עם פירוש" (עבודה לשם קבלת תואר דוקטור לפילוסופיה; ניו-יורק: בית-המדרש לרבנים באמריקה, תשמ"ח).

37 חשוב להעיר שהמאמר יצא לאור לאחר מותו של רוזנטל, והוא משלב רשימות משלוש הרצאות שונות שנשא על התהוות הנוסח של מסכת פסחים. אך לפי הערת העורכים, בניו אברהם ודוד רוזנטל, הניסוח הוא שלו (ראה בעמ' 1, שם). ואף על פי שהדברים נערכו לאחר מותו, נקח את הדוגמאות המובאות במאמר זה כמדגם מייצג של התיאוריה שלו, מדגם ראוי במיוחד, שהרי דוגמאות אלו הובאו ע"י רוזנטל בשלוש הזדמנויות שונות, במסגרת שלוש הרצאות מן השנים תשי"ז, תשכ"א, ותשל"ז.

38 אלו הן: א. חילופי-לשון וסימנטיקה, ב. „לישנא אחרינא" ממש בשמו, ג. חילופי שפות פעמים מה שמסורת הוולגאטה מציעה עברית מציעה המסורת האחרת ארמית ופעמים להיפך, ד. חילופי מונחים בהצעת התלמוד, ה. תוספות והרחבות-לשון, ו. חלופי לשונות מופיעים גם במאמרי האמוראים ואפילו בברייתא, ז. גירסאות מתאימות לנוסח השאילתות, ח. שינויים בין הלשונות גדולים עד כדי כך שהם נראים כחולקים זה על זה בהלכה, ואינם כן.

39 עמ' 11.

40 עמ' 17.

41 יש לשים לב לכך שכ"י מינכן 6 גורס כאן כ„פסחים שלנו" ואין עד נוסח נוסף שמצטרף לגירסת כה"י התימניים. ראה במהדורה של ש"י וולד, „אלו עוברין," עמ' 136*.

מייצגים ענף מסירה קדום. ברוב המקרים של שינוי קיצוני, השוני מתבטא בהוספות ארוכות בכה״י התימניים.[30] לדעתי עובדה זו מצביעה על כך שמדובר במגמה מאוחרת, מגמה של צירוף פירושים לטקסט התלמודי תוך כדי מסירתו בתימן. אבל ההבדלים בכה״י התימניים אינם מצומצמים לתוספות פירוש. ישנם גם הבדלים בגופי תלמוד והוספות מצומצמות יותר. ולא זו בלבד: ישנם מקרים בודדים[31] שבהם נוסח כה״י התימניים מתועד גם בדברי גאון או כ״י אחר, כאשר נציגי הענפים אינם משמרים גירסא זו. דבר זה לכאורה מחזק את טענותיו של רוזנטל, שמדובר בענף עצמאי. אבל במקרים אלו מצאתי שהגירסא בכה״י התימניים בדרך כלל משנית היא לגירסא של V125 וM61. כלומר, במקרים אלו אפשר להבחין במגמה של מעשה עריכה ופישוט הלשון בנוסח התימני. פרידמן מצא תופעה דומה במסכת בבא מציעא. באופן עקבי הגירסא המעובדת של פמ [=פירנצה מינכן] היתה יותר נפוצה בחיבורים של הגאונים. היחס בין נוסח הגאונים ונוסח התלמוד טעון אפוא בדיקה מחודשת.[32]

כאשר כה״י התימניים שומרים על גירסא שנראית קדומה אין הכרח לטעון שהמדובר בגירסא שמקורה בפילוג הענפים. מתוך ההוספות בכה״י התימניים אפשר ללמוד על הספריה שעמדה לפני המסרנים בתימן. הם השתמשו בפירושים רבים ושלטו במקורות מקבילים. נראה לי שהכירות זו הביאה אותם לשנות את הטקסט של הבבלי במיוחד על פי מקבילות. מגמה זו מתאימה גם למה שאנו יודעים על דרך שימושם במדרשים.[33] אפשרות אחרת היא, שהגירסאות שבכה״י התימניים היו במקור גם בנציגים של הענפים (V125 וM61), אבל אלו עברו ,תיקון׳ כדי להתאים ענף אחד לשני, כשהנוסח בתימן היה פחות מושפע מן התהליך הזה. אפשרות נוספת, היא שמסירת התלמוד בתימן בעל פה היא שהביאה להבדל הגדול בין הנוסח בכי״י אלו לבין שאר כה״י. שני כתבי-היד מתימן הם מאוחרים ביותר (לכל המוקדם מסוף מאה השש-עשרה), כלומר כבר מעידן הדפוס. רוזנטל טען שמקרה זה הינו יוצא מן הכלל, לפיו כתב-היד המאוחר הוא היותר טוב. אבל לדעתי התאריך המאוחר ובמיוחד טיב הנוסח המאוחר – הכולל הוספות ארוכות (שבתוכם אפשר למצוא פירוש רש״י, רבנו חננאל, הערוך, ועוד) ופישוט הלשון – מוכיח את ההיפך.

ראוי להדגיש שהמחקר שלנו מתייחס אך ורק לכתבי היד התימניים של בבלי פסחים. על פי בדיקות שנעשו במסכתות אחרות, יש מקום לזהירות בקשר לקביעות גורפות באשר למעמדם של כתבי היד מתימן בבבלי בכלל.[34] במסכתות אחרות עמדו כמה חוקרים על כך שנוסח כתבי היד התימניים הינו הקצר ביותר, מה שמעיד לכאורה על מקוריות: קטע תימני מבבלי מכות תואר כ,,נוסח מקורי מקוצר ויפה הנטול מכל מיני סרבולי לשון וכפילות מיותרת כאשר יראה המעיין,״[35] וכתב יד תימני למסכת ראש השנה נבחר לטקסט הפנים של

30 ראה להלן, ראש חלק טיב השינויים.

31 אדון ברובם להלן, טיב השינויים, סוג ג׳.

32 ראה תגובת ש״י פרידמן (,,להתהוות,״ עמ׳ 92–101) לדברי י׳ ברודי בעניין גירסאות הגאונים.

33 הגר״ש ליברמן כתב על המדרשים מתימן כך: ,,סוף דבר נמצאנו למדים שעלינו לנהג זהירות יתירה במדרשי תימן. היהודים התימנים לא היו אחראים בעד ליקוטיהם; הם העתיקו מכל הבא לידם... ונדמה שבמפרשי תימן עצמם נמצא פתגם המעיד כמאה עדים על טיב המדרשים הללו, שכן הוא במדרש נר השכלים (קהוט עמ׳ 47): איזהו חכם המאסף מכל מקום. החכמה התימנית היתה באיסוף וליקוט, ולאו דווקא באיסוף ממקורות נבחרים אלא בליקוט ואיסוף מכל מקום!״ מדרשי תימן: הרצאה על מדרשי תימן על מהותם וערכם (ירושלים: שלם הפצת ספרים, תש״ל) עמ׳ 39.

34 ראה ש״י פרידמן, תוספתא עתיקתא: מסכת פסח ראשון (רמת-גן: הוצאת אוניברסיטת בר-אילן, תשס״ג) עמ׳ 87 הערה 314.

35 י׳ קאפח, ,,ש״ס תימן: דף ממסכת מכות,״ סיני כח (תשי״א) עמ׳ כ׳.

אליו כ״י JTS (בית המדרש לרבנים 1608) בשבעים וחמשה אחוז מן המקרים של הפילוג.[23] שאר כתבי-היד אינם נוטים לאחד מן הצדדים באופן ברור. נוסח כתבי-היד התימניים מהווה בעיה קשה בפני עצמה, אך בהשוואה לV125 וM61 בהבדלים של גופי תלמוד (היינו: מבלי להתחשב בתוספות), הם מתפלגים למחצה לערך: במחצית מן המקרים כV125 ובמחצית אחרת כM6. לאורך כל הפרק מצאתי יותר ממאה מקרים שבהם יש פילוג בין V125 וM61 והפילוגים האלו מתאימים לטיב השוני בין ענפים, כלומר בני שתים, שלש, או ארבעה מילים, וכלשונו של פרידמן: „איכא דאמרי בזעיר אנפין.״[24] לכן אפשר לקבוע שהנציגים הטובים ביותר של הענפים בפרק זה הם וטיקן 125 מצד אחד ומינכן 6 וJTS מצד שני. על אף הדמיון בין הפילוג כאן לפילוג של בבא מציעא, ישנם, בכל אופן כמה הבדלים:

1. כתבי-היד שמייצגים את הענפים הם במידה ניכרת מעורבים. דבר זה ניכר מתוך המחיקות והתוספות בענף אחד בעקבות הענף השני,[25] ומתוך מספר מצומצם יותר של פילוגים בהשוואה לבבא מציעא.[26]

2. אע״פ שV125 נראה כנציג של ענף נפרד, לא מצאתי באופן עקבי עוד עד נוסח שמצטרף אליו כמו שמצאתי בצד השני שJTS מצטרף לM6.[27]

3. גם נוסחאות הראשונים אינן נוטות בצורה ברורה לאחד מן הצדדים. דבר זה מעיד על מידה רבה של תערובת כבר בשלב קדום.[28]

מכל מקום, אי אפשר לומר שאין שריד של הפילוג לענפים. כמו בבבא מציעא ומסכת שבועות, ברוב רובם של המקרים של ההבדלים בגופי תלמוד הגירסא מתפלגת לשתי קבוצות ולא לשלש או יותר. ברוב המקרים אפשר לראות שהפילוג הוא בין M6 וV125, ושאר כה״י גורסים כולם כאחד מהם. נראה לי שהיו אבות גירסא במסכת פסחים שהיו דומים לאלו שמצא פרידמן בבבא מציעא, אבל כבר בשלב מוקדם השפיעו הענפים אהדדי, מה שקרה פחות בבבא מציעא פרק ו׳. נראה שהמספר הגדול של כי״י ששרדו למסכת פסחים, מהווה עדות לפופולריות של מסכת זו (לפחות פסח ראשון).[29]

כאמור כה״י התימניים שונים משאר כה״י. ואולם עובדה זו עדיין איננה אומרת שהם

23 בפילוגים בגוף התלמוד אחוז ההסכמה גבוה אף יותר, עיין בדוגמאות לפילוג הענפים ב„מהדורה״ שלי, פרק ב׳ עמ׳ 20-37. כדי לעמוד על אופי הפילוג בהקיפו המלא, יש לעיין במכלול השינויים לאורך כל הפרק. במסגרת זו, קצרה ידינו מלהציג מכלול זה, ולעת עתה ראה „מהדורה,״ עמ׳ 117-415.

24 בדומה להבדלים של ענפים שמצאו פרידמן במסכת בבא מציעא, ובנוביץ במסכת שבועות.

25 כאן ראוי להזכיר את הדברים של קרוס (שציטט פרידמן ב„להתהוות״ עמ׳ 92, הע׳ 44): When manuscripts stemming from different textual traditions come into contact, the result is their dissolution into a mixed text or the precipitation of textual crisis which results in recensional activity, and often is the fixing of a uniform or standard text (Frank M. Cross Jr., *IEJ* 16[1966]87). ראה מה שכתבתי להלן על גירסאות הערוך, טיב השינויים בכתבי-היד התימניים בפרק „מקום שנהגו,״ סוג א׳, דוגמא 4.

26 במאמרו „להתהוות״ כותב פרידמן: „היום, בסיום העבודה על פרק זה, הסיכום מראה שט״ו החילופים אינם אלא מדגם קטן, ולאמיתו של דבר הפרק רצוף חילופי גירסה בין שני הענפים הקדומים, כמעט בכל שורה ושורה, והם בערך 250 במספרם״ (עמ׳ 68).

27 מבין כ״י המואחרים הקרוב אליו ביותר הוא כ״י V109 (בערך ששים אחוז הסכמה בכל סוגי שינויים ובשינויים בגוף הטקסט קצת פחות).

28 ראה מהדורה, עמ׳ 43-46.

29 ראה מה שכתבתי במהדורה פרק ב׳.

התרחש בתקופת המסרנים (מעין שני בתי מדרש) שקיבלו אותו טקסט ונהגו בו כדרכם, אחד שמרני ואחד פעיל.[21] הממצאים שמצאנו בבבלי פסחים פרק מקום שנהגו תואמים את התיאוריה הכללית של פרידמן.

חוקרי הנוסח של הבבלי השתמשו במחקריהם במינוח מגוון, ואפשר שבמקרים מסויימים הכוונה המדוייקת לא היתה ברורה כל צרכה. לכן ברצוני להגדיר בשלב זה את המונחים „ענפים," „גירסא משנית" ו„מסורת נוסח," שישמשו בתיאור הדברים להלן. מבחינה טכנית, כל המכונה במחקר הקלסיקה stemma codicorum או family tree, הינו „ענף." לכן „ענף" יכול להיות גם מסורת עצמאית שהתפתחה באיזור גיאוגרפי מסוים, כגון כי"י מספרד או איטליה. אבל במאמר זה המונח „ענף" יחול על שתי המסורות שנוצרו בעקבות פילוג קדום בטקסט התלמודי בבבל לפני החיבורים הראשונים מתקופת הגאונים, כגון השאילתות.

„גירסא משנית" היא גירסא שאין יסודה בפילוג לענפים, שהרי פילוג הענפים קדם לה. היא מהווה המשך של התפתחות לשון התלמוד שהתרחשה באופן טבעי בשלבים מאוחרים של מסירת התלמוד. לדעתי, שינויים אלו יסודם בעיקר בתקופת הגאונים. „גירסא משנית" מפשטת את הלשון, מתרצת קושיות, ומשמיטה לשונות מיותרים. תהליך זה נמשך זמן רב לאחר תקופת הגאונים אבל נראה לי שבספרד ובאשכנז בדרך מצומצמת יותר. הקו המפריד בין „ענף" ל„גירסא משנית" אינו ברור לחלוטין, שהרי טיבם לעתים שווה – בשני המקרים מדובר בפיתוח ועיבוד ומעשה עריכה. לכן העיון בכל עדי הנוסח הוא כה חשוב. ככל שהגירסא מתעודת יותר בכי"י, וככל שהיא עוברת גבולות גיאוגרפיים, עולים הסיכויים שהיא מייצגת פילוג הענפים. (כמובן שקביעה זו היא כללית, ועלינו לבדוק כל דוגמא בפני עצמה).

„מסורת נוסח" מוגדרת במאמר זה ככל מסורת, תהא מוקדמת או מאוחרת. מונח זה גם כולל שינויים שהם אופייניים להתפתחות הטקסט התלמודי באירופה ובמזרח. כל כתב-יד כולל בתוכו „מסורת נוסח." מסורת זו יכולה להיות מושפעת מכמה וכמה גורמים בעת ובעונה אחת: מן הענפים הקדומים, מן המסורת באיזור מסוים, מפירושים, ומטעויות. לכן אפילו בכ"י שמוסר מסורת נוסח קדומה תפקידנו לנסות להבחין בין השינויים שבתוכו לפי טיבם. פרידמן (בבבא מציעא) לא מצא שהנציגים של הענפים טהורים משינויים מטיב אחר. כפי שאמרנו, כל כ"י עשוי ליצג בגירסאות מסוימות אחד מן הענפים.[22]

טרם דיון בתיאוריה של רוזנטל לגופו עלי להציג את התיאוריה שלי בקשר למסורת הנוסח של בבלי פסחים פרק ד'. בניגוד לרוזנטל, לדעתי כתבי היד התימניים אינם „ענף נפרד ועקבי," אלא מהווים התפתחות מאוחרת במסורת הנוסח של הפרק. לדעתי נוסחאות הפרק מחולקות לשתי קבוצות ראשיות כדלקמן: קבוצה א – מסורת נוסח שמיוצגת על ידי נוסח כתב-יד וטיקן 125, קבוצה ב – מסורת נוסח שמיוצגת על ידי כתב-יד מינכן 6, ומצטרף

וישובה, תשנ"ח]). ש"י וולד חקר את הפרק השלישי של בבלי פסחים, ועמד על שני ענפים קדומים הדומים יותר באופיים לענפים שאנו מצאנו מאשר לענפים של רוזנטל. ראה ספרו: תלמוד בבלי מסכת פסחים: פרק אלו עוברין: מהדורה מדעית וביאור מקיף (ניו יורק וירושלים: בית המדרש לרבנים באמריקה, תש"ס) (להלן: „אלו עוברין").

21 לאמיתו של דבר יש רמז לדגם זה כבר במאמרו „לאילן-היוחסין": „אשר לענף גה, חזקתו עליו – גירסא מדויקת ועתיקה, ובענף-מסירה זה כנראה נוצרו פחות לשונות-פירוש" (לאילן-היוחסין, עמ' 140). וכן: „הבחננו בתוספות-פירוש ארוכות בענף פמ, ויש ששכלול ניסוחם ממשיך בנסחים המאוחרים" (שם, עמ' 141). ובעמ' 132: „גירסת פמ היא פיתוח המבהיר את כוונת הראיה"; ובעמ' 133, הערה 215: „או שמא המגיה בענף פמ סגנן כך על-פי מה שהוא מצא כבר בגיטין."

22 ראה ש"י פרידמן, „כתבי-היד של התלמוד הבבלי – טיפולוגיה של כתיב," מחקרים בלשון העברית ובלשונות היהודים (ירושלים: המרכז ללשונות היהודים וספרויותיהם האוניברסיטה העברית, מוסד ביאליק, תשנ"ו) עמ' 163–190.

ענפי הנוסח של פרק „מקום שנהגו"

ברצוננו להציג דגם חילופי לדגם של רוזנטל לתיאור פילוג הנסחים של בבלי פסחים, תיאור התואם יותר את הממצאים שמצא ש"י פרידמן במחקריו על בבלי בבא מציעא.[18] במקביל לדגם חילופי הנוסח של בבלי פסחים שהעמיד רוזנטל, מצא ש"י פרידמן שני ענפים מסוג אחר במסורת הנוסח של הפרק השישי של בבלי בבא מציעא. לפי פרידמן, הענפים התבססו על אותו טקסט קבוע קדום, שמסרו אותו, אלו בצורה שמרנית, ואלו בצורה של פיתוח ועיבוד. הדגם שלו „מסביר, בצד אחד, קיומו של טקסט קבוע וקשיח, ומצד שני, פתיחותו לשינויי לשון מפליגים ומבוררים בין שני ענפי מסירה קדומים",[19] בניגוד לדגם של רוזנטל, שמתאר פיתוח עצמאי של שני טקסטים תוך כדי מסירה בעל פה.[20] הפילוג לענפים לפי פרידמן,

18 פרידמן כתב שני מאמרים על נוסח הפרק, הראשון: „לאילן-היוחסין של נוסחי בבא מציעא – פרק בחקר נוסח הבבלי" בתוך מחקרים בספרות התלמודית, יום עיון לרגל מלאת שמונים שנה לשאול ליברמן (ירושלים: האקדמיה הלאומית הישראלית למדעים, תשמ"ג) עמ' 93-147 (להלן: „לאילן-היוחסין"). ראוי לשים לב שמאמר זה של פרידמן יצא לאור לפני „תולדות הנוסח" ו„ששון לונצר" של רוזנטל. וראה שם, עמ' 104, הע' 57. המאמר השני הוא: „להתהוות שינויי הגירסאות בתלמוד הבבלי," סידרא ז (תשנ"א) עמ' 67-102. הסקירה המקיפה ביותר נמצאת בספרו תלמוד ערוך השוכר את האומנין: הנוסח (ניו יורק וירושלים: בית המדרש לרבנים באמריקה, תשנ"ז) (להלן: „כרך הנוסח"). פרידמן גם דן באספקטים של נוסח הפרק בפירושו המקיף לפרק, תלמוד ערוך, השוכר את האומנין: הפירושים (ירושלים: בית המדרש לרבנים באמריקה, תשנ"א) (להלן: „השוכר את האומנין"). מבין כתבי-היד של הפרק, פרידמן מצא ענף אחד שאותו כינה „גניזה-המבורג" (להלן: גה), וענף שני שאותו כינה „פירנצה-מינכן" (להלן: פמ). בנוסף הוא מצא ששאר כה"י משקפים נוסח „מאוחר" ו„מעורב." במאמרו הראשון בעניין מסורת הנוסח של הפרק פרידמן הביא חמש עשרה דוגמאות של שינויים כאלו שאי אפשר לתלות אותם בטעות בהעתקה או באי הבנה, אלא נראה ששתי הגירסאות מיצגות גירסא לגיטימית של התלמוד. קירבתם הכללית של הנוסחים זה לזה הביאה את פרידמן לדחות את הרעיון של רוזנטל, לפיה פילוג הענפים הינו תוצאה מיחס חופשי לטקסט התלמודי או מסירת התלמוד בעל פה. פרידמן הוכיח חד משמעית, שהענפים שלו עקביים למשך כל הפרק, והם עוברים גבולות גיאוגרפיים. הוכחה אחת לכך היא שהנוסחים המאוחרים מאשכנז וספרד אינם גורסים באופן אחיד כאחד הענפים, „אלא שבנסחים הללו, אפשר לומר לגבי כל גירסה וגירסה (יחידה קצרה של כדי הגהה, כלומר, בערך 2–5 מלים), שהיא כגירסת ענף פמ כצורתה וכמתכונתה, או כגירסת ענף גה וכי הם נסחים ,מעורבים'..." („לאילן-היוחסין," עמ' 95). בנוסף, פרידמן גילה שפירוש רש"י נוטה להסכים עם ענף גה (ראה: „לאילן-היוחסין," עמ' 141), „הספרדי," והלכות הרי"ף כוללות שתי גירסאות מענף פמ „האשכנזי"! (ראה: שם, עמ' 96 ו142). רוזנטל, לעומת זאת, לא הוכיח שפילוג גירסאות ה„לישנא אחרינא" והוולגטה משתקף בחיבוריהם של הראשונים. הוא טען אמנם שפירוש ר"ח הוא כמו כה"י התימניים, אבל אינו מביא הוכחה מסודרת לכך (על כך ראה להלן).

19 „להתהוות," עמ' 73.

20 לדיון בהבדלים בין פרידמן לרוזנטל ראה מה שכתבתי ב„מהדורה," עמ' 10-11. המחקרים של פרידמן ורוזנטל הביאו חוקרים נוספים לגילוי ענפים קדומים במסכתות אחרות בתלמוד. משה בנוביץ חקר את הפרק השלישי של מסכת שבועות ומצא גם הוא שני ענפי נוסח קדומים (ראה: מ' בנוביץ, „נוסח פרק שבועות שתים בתרא בבבלי: מהדורה ביקורתית של בבלי שבועות פרק ג' עם מבוא" (עבודה לשם קבלת התואר מוסמך; רמת גן: אוניברסיטת בר-אילן, תשמ"ז). וראה מאמרו: „שני ענפי הנוסח של פרק שבועות שתים בתרא בבבלי," סידרא י [תשנ"ד] עמ' 5-38). עדיאל שרמר גילה התפלגות לענפים בין כתבי-היד של בבלי מועד קטן (ראה: ע' שרמר, „,תרי לישאני': מסורת הנוסח של בבלי מועד קטן," אסופות ב [תשמ"ח] עמ' יז-כח; „משפחות כתבי-יד ומסורות נוסח של מועד קטן," סידרא ו [תש"ן] עמ' 121-150; „בין מסורת-עריכה למסורת-נוסח: מהדורה אחרת של בבלי מועד קטן מן הגניזה," תרביץ סא [תשנ"ב] עמ' 375-399). לאחרונה מרדכי סבתו הלך בעקבות רוזנטל במחקרו על כתב-יד תימני של מסכת סנהדרין (ראה: מ' סבתו, כתב-יד תימני למסכת סנהדרין (בבלי) ומקומו במסורת הנוסח [ירושלים: האוניברסיטה העברית המכון למדעי היהדות החוג לתלמוד, יד יצחק בן-צבי המכון לחקר ארץ-ישראל

איננו, לאמיתו של דבר, חלק מה„לישנא אחרינא" המונח, לדבריו בכתבי-היד התימניים.
גם בתיאורו את נוסח כה"י התימניים משתמש רוזנטל במונחים שונים. בתקציר ובמאמרו „ששון-לונצר" הוא מכנה את הטיפוסים השונים „מסורות-נוסח," אבל במאמרו „תולדות הנוסח" הוא טוען שהתימנים שייכים ל„ענף שלם, מיוחד ועקבי."[13] מה שברור לפי רוזנטל הוא שכה"י התימניים מייצגים על פי רוב את הגירסא הקדומה והאמינה ביותר של התלמוד הקדום.[14] במכתב שפורסם בספרו של ש' מורג על זמן כתיבתו של כ"י TJTS, כותב רוזנטל:

> ואעפ"י שנוסח-פסחים שבכ"י ענעלאו 271 הוא, בלא שום ספק, אחד החשובים ביותר, ולדעתי: אף החשוב(!) ביותר, מכל עדי-הנוסח של מס' פסחים – זה המייצג הנאמן ביותר של מסורת ,לישנא אחרינא' של מס' פסחים, שמתאים עם נוסח ר"ח ונוסחם המקורי של גאוני בבל, כמו שהוכחתי בעבודתי על ,עריכת מסכת פסח-ראשון בבלי,' ירושלים תשי"ט... יחד עם זה הרי הוא, לפי כל הסימנים, אף המאוחר שבכל עדי-הנוסח (עד כמה שלא הועתקו מן דפוסי הבבלי). ללמדנו – שלאו דווקא קדמות הכתיבה מכרעת, אלא טיבה, מקומה ומקורה.[15]

גם מבלי להתיחס לדגמים אלטרנטיבים, דומה שישנן בעיות הגיוניות בדגם שמציג רוזנטל לתיאור עדי הנוסח של מסכת פסחים. אם ה„לישנא אחרינא" באמת התפתח בתקופה שבין העריכה לכתיבה, ואם התפתחות זו נמשכה לתוך תקופת הגאונים מדוע שייכת תופעה זו רק לכי"י התימניים ואין לנו תיעוד באופן עקבי לשינויים מעין אלו בשאר העדים של המסכת?[16] עובדה זו מחזקת את האפשרות שמדובר בתופעה שהתפתחה בתימן עצמה ולא בענפים בבלים קדומים, שהרי ברוב רובם של המקרים, גירסת כה"י התימניים היא יחידאית. אילו מדובר היה בתופעה בבלית היינו מצפים למצוא יותר עדות לכך בכי"י אחרים. אם הפילוג באמת התרחש לפני הכתיבה הסופית, היינו מצפים לנציגות יותר מכובדת של התופעות שרוזנטל תיאר. ולא זו בלבד, אלא שהדגם של רוזנטל מביא לעירבוב מוקדם ומאוחר. מצד אחד הוא אומר ש„לישנא אחרינא" הוא תופעה קדומה, אבל מצד שני מדובר בתהליך מתמשך שנמשך לאורך תקופת הגאונים. במושגים של עריכת התלמוד וקביעתו הסופית תקופת הגאונים מאוחרת היא.[17]

13 נראה שרוזנטל לא הבדיל בין המונחים „מסורת נוסח" ו„ענף," והוכחה לכך הם דבריו ב„פתח-דבר" לעבודת הדוקטור שלו. שם הוא מזכיר „ענף המסורת השנייה" (עמ' 1), ובמאמרו „תולדות הנוסח" הוא גם משתמש במונח „ענף." גם בסקירתו על התיאוריה של רוזנטל, פרידמן אינו מבדיל ביניהם. הוא כותב שם: „עניין ענפי-המסורת של מסכת פסחים נחקר רבות על-ידי רא"ש רוזנטל. בעזרת קולאציה של הגירסאות הוא העמיד על ענף שייחודו הכולל נושא אופי של „לישנא אחרינא" מן הענף שלפנינו" וכו' („לאילן-היוחסין," עמ' 104).

14 ראה הערה 4 לעיל.

15 ראה: ש' מורג, ארמית במסורת תימן: לשון התלמוד הבבלי (ירושלים: מכון בן-צבי לחקר קהילות ישראל במזרח, תשמ"ח) עמ' 55–56, הע' 111.

16 ברור שגם רוזנטל רצה למצוא עדות נוסח נוסף לכה"י התימניים, אבל הדבר לא עלה בידו (חוץ מן העדות ה„חלקית" של כ"י ו [M6], ועל כך ראה להלן).

17 ראה: י' ברודי, „ספרות הגאונים והטקסט התלמודי," מחקרי תלמוד א' (ירושלים: הוצאת ספרים ע"ש י"ל מאגנס, האוניברסיטה העברית, תש"ן) עמ' 237–303. הוא כותב: „ייתכן מאד, שלולא הצורך להפיץ את התלמוד מעבר לגבולות הישיבות הבבליות, לא היה נכתב אי פעם" (עמ' 242, ראה גם עמ' 241 הערה 20). וראה י' זוסמן, „ושוב לירושלמי נזיקין," שם. הוא כותב: „ולמעשה, אין בידינו ידיעות של ממש על תלמוד הבבלי כיצירה כתובה עד לקראת המאה השמינית" וכו' (עמ' 108 הערה 203, וראה המשך דבריו שם).

ושל פי׳ ר״ח לפסחים. מסורת נוסח זו... שונה לחלוטין, לעתים תכופות, מן לשונה – ופעמים אף מן עניינה של אותה מסורת שאנו רגילים בה, על פי כי״י וההוצאות, במס׳ פסחים.[8]

„ששון-לונצר״ תשמ״ה

מסכת פסחים (בבלי) מיוחדת בכך שהיא מונחת לפנינו בשתי מסורות-נוסח שונות.... מן שתי מסורות-נוסח שונות אלה רווחת האחת ברוב רובן של עדי-הנוסח, והיא אף זו המיוצגת בדפוסים שבידינו. אכנה אותה להלן: מסורת-הנוסח ,הרווחת׳ או: ,נוסח הוולגאטה׳ (vulgata) ...

ואילו השנייה היא מסורת-נוסח מזרחית מובהקת. היא זיהה (!) כמעט עם הצעת גופי התלמוד שבפי׳ רבינו חננאל (ר״ח). ויש בה, איפוא, כדי להוכיח כמאה עדים על פירושו של ר״ח, שעיקרו גופי תלמוד כלשונם על-פי מסורת-נוסח מיוחדת זו.

עדיה הראשיים, בתוך שורת כהי״י של מס׳ פסחים (בבלי), הם: שני כי״י תימניים, (1) כ״י ענעלאו... , (2) כ״י קולומביה... שני אלה צעירים הם, בני המאה השש-עשרה. אבל שניהם נאמנים וחשובים עד לאחד. ואליהם מצטרף, (3) כ״י מינכן 6 (להלן כ״י ו), כ״י ספרדי ישן, שאת עתיקותו, את נאמנותו ואת תיאומו עם פי׳ ר״ח הכיר כבר ר׳ רנ״נ ראבינאביטץ, בעל דיקדוקי סופרים. מסורת-נוסח זו אכנה להלן: ,לישנא אחרינא׳ או ,נוסח עתו׳.[9]

„תולדות הנוסח״ תשמ״ח

עם שאני מהדר ומהפך זה כמה שנים בהוצאת הנוסח של מסכת פסחים, נתגלה ובא לידי ענף שלם, מיוחד ועקבי, של מין „לישנא אחרינא״ לעומת „פסחים שלנו.״ מדובר בנוסח שנשתמר בשני כתבי-יד תימניים: כ״י ענלאו... וכ״י ספריית קולומביה ... ובחלקו (ורק בחלקו, כי כאן יש כבר עירוב פרשיות) גם בכ״י מינכן 6.[10]

ההבדל העיקרי בין הגירסאות השונות של הענף שנתגלה ע״י רוזנטל הוא בענין כ״י מינכן 6, או „ו.״ השאלה היא, אם כתב-יד זה שייך לטיפוס התימני הקדום או לא. בתקציר „לישנא אחרינא״ מתקבל הרושם שכן הדבר, שהרי רוזנטל כותב: „וכן ע״י חלקו המרובה [הדגשה שלי] של כ״י מינכן 6.״ ב„ששון-לונצר״ מידת שייכותו של כ״י M6 איננה מוזכרת אלא הוא פשוט „מצטרף״ ל„לישנא אחרינא״ הקדום, אם כי איננו כנראה מיצג „ראשי.״ לעומת זאת, ב„תולדות הנוסח״ מוזכרת העובדה שM6 מיצג בחלקו[11] את ה„לישנא אחרינא,״ „ורק בחלקו, כי כאן יש כבר עירוב פרשיות.״[12] ושמא ככל שהמחקר שלו התקדם ראה רוזנטל שכ״י M6

8 „לישנא אחרינא,״ עמ׳ יד.

9 „ששון-לונצר,״ עמ׳ 5–6.

10 „תולדות הנוסח,״ עמ׳ 9–10.

11 אך חלק זה מפוזר ומפורד: מדובר בדוגמא 4 בדף סה ע״א, דוגמא 6 בדף ט ע״ב, דוגמא 8 בדף יח ע״א, דוגמא 21 בדף יד ע״א-ע״ב, ודוגמא 23 בדף נח ע״א-ע״ב.

12 גם בפתח דבר לדיסרטציה שלו עמדתו לא ברורה כל צורכה: „ברצוני רק להדגיש גם כאן, שהמציאה החשובה ביותר היא גילויו של ,לישנא אחרינא׳ מן נוסח [ולא גוף התלמוד!] הבבלי פסח-ראשון שבשני כה״י התימנים (עת).״ ואין זכר לכ״י ו׳ (M6)! אבל בהמשך שם: „ושהתפלגות המסורות עת + ו (עכ״פ בפרק ראשון, ובכל „פסח שני״!) ./. ראלמפקש + קטעי גניזה (ג) עוברת גם ,במזרח׳!״ במהדורה שלו בעבודת הדוקטור הוא רשם את גירסאות כ״י M6 בצד שמאל ביחד עם „לישנא אחרינא.״

הינם לפי רוזנטל שלב ביניים בין העריכה ובין הכתיבה.[5] לפני הכתיבה הטקסט נמסר בעל פה, ובשלב זה (והוא בתוך תוכה של תקופת הגאונים) נוצרו שני טיפוסים שונים של הטקסט – ה„נוסח הרווח" ו„לישנא אחרינא".[6]

בתוך כתביו של רוזנטל ישנן שלוש גירסאות שונות של תיאור תופעת ה„לישנא אחרינא" במסכת פסחים. וזה לשונן לפי סדר הופעתם בדפוס:

„לישנא אחרינא" תשי"ז

דיוננו זה יעסוק במעין „לישנא אחרינא" כזה,[7] שנתגלה לי במסורת-הנוסח של מס' פסחים. הוא מיוצג ע"י שני כי"י התימניים וכן ע"י חלקו המרובה של כ"י מינכן 6 ...

רוזנטל על שני הענפים: „אין זה אלא אותו התלמוד בדמות לשונית שונה. אותו תלמוד קדום, בארץ מולדתו, בישיבות בבל, לא נקרא, אלא הורצה." בסיכום זה בא רוזנטל להפריך שתי תפיסות; הראשונה הרעיון שחילופי הנוסחאות בבבלי משקפים עריכות שונות, והשניה הרעיון לפיו השינויים בתלמוד נובעים מטעויות של סופרים אירופיים. לפי רוזנטל אין הדבר כן, אלא השינויים נובעים מבבל ואירעו בתוך תקופת הגאונים (לפני שהתלמוד הופץ באירופה). יוצא שהביטוי „קדום" מתיחס לפחות לתקופת הגאונים ואולי אף לפני כן, לפני העלות התלמוד על הכתב.

רוזנטל מיעט להכריע בין גירסאות הענפים איזו המקורית, אבל בכמה מקומות הוא מדבר על טיב הנוסח של ה„לישנא אחרינא" ומתארו כמשובח או מדויק. למשל, במאמרו „תולדות הנוסח" הוא כותב (עמ' 28): „ובין אלה ישנן דוגמות שמלמדות על טיבה המשובח של מסורת הנוסח של ,לישנא אחרינא' שיש בידה להחזיר לנו אבידה יקרה שאבדה ונשתקעה בתוך נוסח הוולגאטה." וכן במאמרו „ששון-לונצר" כותב רוזנטל: „לעומת זאת קובעת מסורת-הנוסח של ,לישנא אחרינא' את ,דיבורי-ההצעה' בסידור שקול ומדוקדק" (עמ' 10). במקומות מסוימים רוזנטל נוטה לומר ש„לישנא אחרינא" הוא הקדום יותר; למשל, במאמרו „תולדות הנוסח" על חילוף בדף נח ע"ב הוא כותב: „שמא נבוא אפוא לומר כי נהפוך הוא: נוסח הוולגאטה כל עצמו אינו אלא קיצור של נוסח עתו. קיצור, שהחליף את כל האריכות... אפשר. ולא באנו לקבוע בזה מסמרות" (עמ' 23, וראה „ששון-לונצר," עמ' 38 ד"ה „כלום ניתן"). ובמקצת מן המקרים הוא מכריע בריש גלי; למשל, במאמרו „ששון-לונצר" על חילוף הגירסאות בדף י ע"א–ע"ב, כותב רוזנטל: „דומה, שמכאן ניתן ללמוד גם משהו על המוקדם והמאוחר שבשתי מסורות-נוסח אלה, נוסח ,הוולגאטה' ונוסח ,לישנא אחרינא'" (עמ' 31), ובהמשך הוא מכריע: „מסורת-נוסח כ"י ע-שאילתות היא, איפוא, במקומנו כאן בחינת ,מוקדם'; ואילו נוסח ,הוולגאטה' המעובד על-פי ההיא, מאוחרת הימנה" (עמ' 32). ובפתח-דבר לדיסרטציה שלו כותב רוזנטל: „טופס זה, שהוא קשור בכמה וכמה מקומות עם נו' השאילתות וגם פה ושם דווקא עם נו' פסוקות ששון, ושאף נו' ר"ח קרוב אליו, מעיד בכל מקום על מקוריותו" (עמ' 1). מכלל דברי רוזנטל ניתן ללמוד איפוא ש„לישנא אחרינא" הינו נוסח מדויק ומשובח ומקורי יותר של התלמוד הבבלי של מסכת פסחים.

5 בבבלי תמורה רוזנטל הציע דגם אחר לפיו ה„לישנאות" הם מן השלב לפני העריכה. ראה: רוזנטל, „ללשונותיה של מסכת תמורה," תרביץ נח (תשמ"ט) עמ' 317–356. לסיכום של השלבים השונים שבתיאורית רוזנטל ראה מה שכתב ש"י פרידמן, „להתהוות שינויי הגירסאות בתלמוד הבבלי," סידרא ז (תשנ"א) (להלן: „להתהוות") עמ' 72–73, הערה 14.

6 במאמרו „תולדות הנוסח" כותב רוזנטל: „התהליך של קביעת התלמוד הבבלי – ורק של הבבלי, למעט הירושלמי! – בלבוש לשוני קבוע ומוצק, היינו, נוסח – כתוב או לא כתוב, אבל על כל פנים ,מונח' – היה תהליך ממושך מאוד, הרבה יותר ממה שמניחים בדרך כלל. ואף לאחר ש,נערך' ונסדר – מבחינת ענייניו ותכניו – נמסר עוד זמן ממושך (אני משער משום כמה נימוקים, עד לתחילת המאה התשיעית, לפחות) בהרצאה חופשית, שוטפת וזורמת, בלתי כבולה בידי ,נוסח' כתוב, בלעדי, מוגמר וקפוא. דומה – מצד הסברה בלבד – שהיה כתוב במשהו. אבל על כל פנים, החכם בישיבתו, כלומר, הגאון, או ,אב בית דין' השני לו במעלתו, הרצה אותו בפני קהל שומעיו על-פה" („תולדות הנוסח," עמ' 7–8). למרות שרוזנטל אומר כאן „שהיה כתוב במשהו," ברור שהוא הסביר את החופשיות בכך שהתלמוד נמסר בעל פה. ראה בהמשך שם (בעיקר בעמ' 9, בעמ' 23 דוגמא 23, ובעמ' 30 ד"ה „ואמנם").

7 דומה לזה של האמוראים בסוגיות של „לישנא אחרינא אמרי לה" לפי הסעיף הקודם.

שני כתבי יד תימניים מהווים ענף נפרד של נוסח המסכת.[2]

בשנים האחרונות עסקתי בכתיבת פירוש לפרק מקום שנהגו בבבלי פסחים וחקרתי גם את נוסח הפרק.[3] מתוך העיון שלי בפרק „מקום שנהגו" נראה שיש מקום להצעת דגם אחר של מסורות הנוסח של בבלי פסחים. טיב השינויים הנמצאים בכתבי יד התימניים אינם מתאימים לענף קדום, אלא נראים מתאימים יותר להתפתחות מאוחרת (ולרוב גם מקומית) במסירת הנוסח. במאמר זה נדון בתיאוריה של רוזנטל בקשר למסורת הנוסח של בבלי פסחים כפי שהיא באה לידי ביטוי במחקרים שלו שפורסמו החל משנת תשי"ז, ועד למאמר האחרון שיצא לאחר פטירתו בתשמ"ח. לאחר הדיון בדוגמאות שלו במחקריו – נדון בדוגמאות מן הפרק שלנו, אשר לדעתי מצביעים על כיוון אחר בהסבר ענפי הנוסח.

התיאוריה של רוזנטל בהתפתחותה

לדעת רוזנטל, כתבי-היד של בבלי פסחים ששרדו מחולקים לשני טיפוסים של נוסח, הראשון הנוסח הרווח, הנמצא ברוב כתבי-היד וגם בדפוסים, והשני טיפוס שונה בהרבה שמיוצג על ידי שני כתבי-יד מתימן ובכתב-יד נוסף ספרדי. את הטיפוס הראשון רוזנטל מכנה „הגירסא הרווחת" או נוסח ה-vulgata, והשני „לישנא אחרינא," או „נוסח עתר" (ע=TJTS, ת=TCOL, ו=M6). ה„לישנא אחרינא" שתיאר רוזנטל בפסחים שייך לדעתו לשלב קדום[4] של פילוג הטקסט התלמודי, אף על פי שאין לראות בו עריכה שונה של המסכת. השינויים במסכת פסחים

2 יש בידנו שני תקצירים של הרצאה אחת, ושני מאמרים גדולים שעוסקים במסורת-הנוסח של מסכת פסחים. התקצירים הם: „'לישנא אחרינא' בעיות במסורת-הנוסח של התלמוד הבבלי," הקונגרס העולמי השני למדעי היהדות, תקצירי ההרצאות (ירושלים: האיגוד העולמי למדעי היהדות, תשי"ז) עמ' יד-טו. ובשינויים קלים באנגלית: "'Lishna Aharina' Questions in the Transmission of the Text of the Babylonian Talmud," loc. cit., 18–19 (להלן: „לישנא אחרינא"). ושני מאמרים: „תלמוד בבלי, מסכת פסחים כתב-יד ששון-לונצר ומקומו במסורת-הנוסח" (לונדון: הוצאת ספרית ולמדונא, תשמ"ה) (להלן: „ששון-לונצר"); „תולדות הנוסח ובעיות-עריכה בחקר התלמוד הבבלי," תרביץ נז (תשמ"ח) עמ' 1-36 (להלן: „תולדות הנוסח").

3 ראה עבודת הגמר לתואר שני שכתבתי בהדרכתו של פרופ' שמא יהודה פרידמן באוניברסיטת בר-אילן: „נוסח פרק מקום שנהגו בבבלי: מהדורה ביקורתית של פרק רביעי ממסכת פסחים על פי כתבי היד וקטעי הגניזה בצירוף מבוא ופירוש קצר בעניני נוסח" (רמת-גן, תשנ"ה) (להלן: „מהדורה"). ועבודת הדוקטור שגם נעשתה בהדרכתו של פרופ' פרידמן: „מהדורה ופירוש מקיף לפרק ,מקום שנהגו': בבלי פסחים פרק ד'" (חיבור לשם קבלת התואר דוקטור לפילוסופיה, אוניברסיטת בר-אילן, תש"ס) (להלן: „פירוש מקיף"). להלן סימני הקיצורים של עדי הנוסח שבהם השתמשתי במאמר זה: M6 (= כתב יד מינכן 6), JTS (= כתב יד ניו-יורק, בית המדרש לרבנים, אדלר 850 [Rab. 1608]), SAS (= כתב יד ששון 594), TCOL (= כתב יד קולומביה T14 X893), TJTS (= כתב יד ניו-יורק, בית המדרש לרבנים, ענאלו 271 [Rab. 1623]), VEN (= דפוס ונציה, רפ"ב), V134 (= כתב יד וטיקן 134), OX (= כתב יד אוקספורד 366), M95 (= כתב יד מינכן 95), V109 (= וטיקן 109), V125 (= וטיקן 125), LON (= כתב יד לונדון, מוזיאון הבריטי OR 5530/399), SCHO (= כתב יד ספרית שוקן ירושלים 2023), G188 (= קטע גניזה לנינגרד-אנטונין 188/864), G84 (= קטע גניזה קימבריג' TS-F1 [2]/84). אני מודה למכון התלמוד הישראלי השלם, ולרב י' הוטנר, העומד בראשו, שהרשני להשתמש בציונים לקטעי גניזה לפסחים מתוך רשימותיהם.

4 ראוי לעמוד כאן על השימוש שלי במונח „קדום." רוזנטל לא מרבה להשתמש בביטוי זה, אבל אין מנוס מלייחס לו מסקנה זו, על סמך כל שאר תיאוריו ושבחיו ל„לישנא אחרינא." בפתיחה למאמרו „תולדות הנוסח," רוזנטל מתאר את מצב המחקר בעניין בקורת הנוסח, ומעיר: „ואילו השאלה: ומהו ,התלמוד התלמודי,' הראשוני, של סוף הוראת רב אשי ורבינא כביכול, שאלה זו כמעט ואין היא עולה כלל." ומכאן שרוזנטל עצמו מעלה לדיון את השאלה הזאת.

ברור הוא שלדעת רוזנטל שני ענפי הנוסח של פסחים קדומים הם. ב„תולדות הנוסח" בעמ' 30 כותב

מקומם של כתבי היד התימניים במסורת הנוסח של בבלי פסחים

אהרן עמית
אוניברסיטת בר־אילן

The Place of the Yemenite Manuscripts in the Transmission-History of *b.Pesaḥim*

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In a series of studies published beginning in the 1950's, E.S. Rosenthal divided the manuscripts of *b.Pesaḥim* into two distinct groups, which represent an early split in the transmission of the Talmud: the "vulgata" group, consisting of the majority of witnesses (including the printed editions), and the *lishna aharina* or "alternative version," which he claimed was represented primarily by two manuscripts from Yemen (JTS Enelow 271 and Columbia x893). The present study offers an alternative model: the two textual traditions are represented in their purest forms by MS Vatican 125 and MS Munich 6, respectively. The Yemenite manuscript tradition of *Pesaḥim*, by contrast, is a later development. The vast majority of the unique readings in the Yemenite manuscripts are attested only in Yemen; if these truly represented a Babylonian tradition we would expect to find confirmation of more of these readings in European manuscripts. Furthermore, the Yemenite variation is almost always an addition to the basic text found in other manuscripts (in one case more than one hundred words are added!). Numerous Yemenite glosses cite parallel sources and commentaries, including those of Rashi, the *ᶜArukh*, and Rabbenu Ḥananel. Moreover, even in those cases in which the Yemenite reading is parallel to the more common reading, rather than a gloss, the Yemenite version is demonstrably more developed: it addresses a textual problem found in the more common reading, reacts to parallel sources, or adjusts the text so that it conforms with opinions of classical commentators.

מחקריו של א״ש רוזנטל על בבלי פסחים מהווים ציון דרך במחקר התלמוד המודרני. פרופסור רוזנטל היה מחלוצי חקר הנוסח של הבבלי ותרם תרומה חשובה לבניית דגם שיסביר את טיב השינויים בבבלי. חלק נכבד מן העבודה שלו הוקדש לבבלי פסחים. החל מעבודת הדוקטור הקדיש רוזנטל תשומת לב מיוחדת למסכת זו.[1] רוזנטל הקדיש כמה מחקרים לתיאוריה, שלפיה

1 א״ש רוזנטל, „לעריכת מסכת פסח-ראשון, בבלי, בצירוף הוצאה ביקורתית של מ׳ פסחים ב׳ א׳ – י״ד א׳״ (ירושלים: האוניברסיטה העברית, תשי״ט)(להלן: „פסח-ראשון״).

ההקלה בולטת במיוחד אצל הנשיאים שחששו שמתן ביטוי עמוק לאבלות עלול לעורר תסיסה משיחית ושאיפה לחירות מדינית, דבר שיערער את היחסים עם השלטונות ויחבל בפעולות השיקום. הלכות קדומות אלה ספק אם הם מימי הבית שהיו על חורבן הבית הראשון, או מלאחר בית שני, בעקבות חורבנו. אין כמעט הלכות הקשורות לתשעה באב שנאמרו ע"י חכמי יבנה, למעט האמירה שכל האוכל והשותה בתשעה באב כאוכל ושותה ביום כיפור, שקשה לקבוע אם דברים אלה מיוחסים לרבן גמליאל דיבנה או לרשב"ג. גם אם דברים אלה מיוחסים לרבן גמליאל, יש בהם רק מעין הצהרה פומבית הכרחית, דווקא מהנשיא, כמייצג את חכמי הדור על חשיבותו של היום, לדור שהיה עד לחורבן, ושהיה נתון במשבר רוחני גדול. אולם למעשה, מכיוון שאין בידינו עדויות ספרותיות מחכמי יבנה, על הלכות שהם קבעו הקשורות ליום זה, אנו מניחים שהם לא טיפחו ועיצבו את אופיו ההלכתי של היום, כי בראש מעיינם היה שיקומו הלאומי והרוחני של העם, בהתויית דרכי פולחן וכפרה חלופיים, בעקבות החלל הרוחני שנפער לאחר החורבן. כנראה שהם חשבו, שטיפוח הלכות הקשורות לתשעה באב, עלול יהיה לפגוע במאמצי השיקום שלהם. לכן, גם אם החלו לגבש את דיני תשעה באב לאחר חורבן בית שני, כנראה שדפוסי היום לא נקבעו ועוצבו ע"י חכמי יבנה, לפחות לא באופן פומבי, אלא הם התגבשו בצורה עממית, כשהתאריך שנקבע היה דווקא תשעה באב, כי ביום זה חרב בית ראשון. אין לדעת אם המאורעות הנוספים שגם אותם מייחסים ליום זה, היו אף הם סיבה לקביעת היום, או צורפו אליו רק מאוחר יותר, לפי העקרון שמגלגלים חובה ליום חייב. בדור אושא ניתן להבחין במגמות שונות בהתייחסות לדיני תשעה באב. מגמה של החמרה בולטת אצל החכמים שלמדו בדור יבנה בלוד, מקום מושבם של משפחות הכהנים שמוצאם מירושלים שהתיישבו בלוד וגם בציפורי. להם היה קשה להכיר שחורבן בית המקדש הוא עובדה מוגמרת. הבולט שבהם היה רבי יהודה בר אילעאי שהחמיר בהלכות תשעה באב. לעומתו בולט הנשיא רבן שמעון בן גמליאל בגישתו המקלה שלפניו עמדה המשימה להמשיך את פעולות השיקום לאחר מרד בר כוכבא. בתווך, נמצאת עמדת הביניים של רבי מאיר תלמידו המובהק של רבי עקיבא – שבתחילה פעל בשיתוף פעולה עם ר"ג דיבנה ואח"כ היה מראשי תומכי מרד בר כוכבא. דומה, שעמדות ביניים אלה משקפות את המצב המורכב שבו היה נתון רבו, שאותו ספג רבי מאיר, והמתבטאת בעמדותיו אלה.

תודתי לפרופ' דניאל שפרבר ולפרופ' יוסף תבורי על הארותיהם.

הברייתא מוסיפה ומציינת:

> תניא אמרו לו לרבי יהודה לדבריך עוברות ומניקות מה תהא עליהן אמר להם אף אני לא אמרתי אלא ביכול תניא נמי הכי מודים חכמים לרבי יהודה ביכול ומודה רבי יהודה לחכמים בשאינו יכול.[202]

רבי יהודה (בר אילעאי) מחייב בכפיית המיטה, והדבר אופייני לגישתו המחמירה בדיני אבלות של תשעה באב.[203] הוא הרי הסבור שאיסור תספורת וכיבוס נוהג בכל החודש.[204] מנהגו בערב תשעה באב היה, לשבת בין תנור לכירים, „ואוכל פת חרבה במלח ושותה עליה קיתון של מים ודומה כמי שמתו מוטל לפניו."[205] רבי יהודה הנשיא הביא במשנתו מחלוקת בין רבי יהודה לחכמים. על קיומה של מחלוקת ביניהם ניתן ללמוד גם מהברייתא הראשונה לעיל, שם חכמים שואלים את רבי יהודה לשיטתו, מה יעשו עוברות ומניקות? והוא השיב להן, שמכיון שהן אינן יכולות הן פטורות. אולם חכמים עומדים על דעתם, ולא הודו לו כל עיקר, והם חולקים עליו לגבי שאר האנשים,[206] ואין הם סבורים שיש לחייב את כפיית המיטה. אולם לפי הברייתא השניה לעיל, אין ביניהם כלל מחלוקת, כי שניהם מסכימים שביכול, כופים את המיטה, ובשאינו יכול אין כופים. יתכן שברייתא זו משקפת את המגמות המחמירות שהיו גם בדור אושא בכל הקשור לדפוסי האבל החמורים של תשעה באב. אולם רבי יהודה הנשיא הביא במשנתו מחלוקת בין רבי יהודה לחכמים. אולי יש לראות זאת כחלק ממגמת הקולא של דורות התנאים המאוחרים בכלל, ושל רבי יהודה הנשיא בפרט. לכן הוא בחר שלא לסמוך על הברייתא השניה, אלא להציג מחלוקת בעניין כשרבי יהודה הוא שיטת יחיד כנגד חכמים.

קריעה, חליצת כתף, עטיפת הראש. על אף שהאבל חייב בהם, לא חייבו לנהוג כך גם בתשעה באב. הקריעה וחליצת הכתף קשורים לצער על הפטירה ולכתחילה יש לעשותם „בשעת חימום" מיד בהיוודע דבר המוות,[207] אולם באבלות לזכרון שהיא „אבלות ישנה" לא תיקנו. ניתן גם לעלות את השיקול הכלכלי, שבגללו נמנעו חז"ל מלחייב לקרוע את הבגד. בעניין עטיפת הראש (עיטוי על שפם), שהאבל חייב בו.[208] חז"ל לא חייבו זאת בתשעה באב, כנראה מכיוון שרק האבל היושב בביתו חייב בכך, בשונה מתשעה באב שיוצאים מהבית, וכן מותרת מלאכה במקום שנהגו, ואין זה מעשי לחייב בעטיפת הראש.

לסיכום יאמר, שאופיו של תשעה באב, ספק אם התגבש בעם בימי בית שני, כשהתענו על חורבן הבית הראשון או רק לאחר חורבן בית שני. הלכות היום הם שילוב שבין דיני תענית ציבור, שנהגו בהם זה מכבר בימי בית שני, ומדיני האבל המשפחתיים שביהדות, וזאת כדי לשוות לחורבן מימד של אבל אישי, כל זאת נעשה בצורה הדרגתית החל מראש חודש אב. ההלכות הקדומות המתייחסות לתשעה באב, מתאפיינות באנונימיותן ובאופיין המחמיר בהשוואה להלכות משלהי תקופת המשנה ותקופת התלמוד, שהן הלכות מקלות יותר. מגמת

202 בבלי תענית ל ע"ב; ראה עוד: הלבני, מקורות, ב:תסא.
203 אולם ראה בירושלמי תענית ד י, סט ע"ג, ובשיירי הקרבן שם.
204 בבלי תענית כט ע"ב.
205 שם ל ע"א–ע"ב.
206 ראה: דברי רבא בסוגיא שם.
207 ראה: רובין, קץ החיים, 163–170.
208 שם, 170–172.

האבל משיב למברכיו: „אבל אני" מהיום השלישי עד היום השביעי הוא משיב בשפה רכה.[193] את טעם האיסור הסביר נ' רובין:

> מתוך האיסור ללמוד תורה אנו למדים כי האבל מצוי במצב של בידוד חברתי. מנקודת מבט זו, גם שאילת שלום אסורה עליו.[194]

לגבי תשעה באב נאמר בתוספתא: „ואין שאילת שלום לחבירים בתשעה באב ולהדיוטות בשפה רפה."[195] משמע ששואלין בשלום ההדיוטות בשפה רפה. אולם בברייתא שבירושלמי שנינו:

> אין שואלין בשלום חבירים בתשעה באב אבל משיבין את ההדיוטות בשפה רפה.[196]

משמע שמשיבין שלום להדיוטות אך אין שואלין בשלומם. ניתן לשער, שלפנינו מחלוקת בהלכה קדומה, לגבי הדיוטות, אם מותר רק להשיב להם או גם לשאול בשלומם. או לחילופין שתי הברייתות משקפות שתי תקופות: ההלכה הקדומה המשתקפת בברייתא שבירושלמי, אסרה לשאול בשלום החבירים וההדיוטות, והתירה רק להשיב להדיוטות בשפה רפה. ההלכה המאוחרת, זו המשתקפת בתוספתא, הקלה בדיני תשעה באב, התירה גם לשאול בשלום ההדיוטות בשפה רפה.

איסור הליכה לבית המשתה. איסור זה קיים באבלות שאסור לאבל להשתתף בסעודה ובמשתה במשך י"ב חודש.[197] איסור זה בודאי קיים גם בתשעה באב.

איסור נישואין. אבל אסור בנישואין.[198] לגבי תשעה באב, לפי הברייתא האיסור מתחיל מראש חודש אב.[199]

כפיית המיטה. על האבל קיימת חובה לכפות- להפוך את כל המיטות שבבית האבל כשרגליהן כלפי מעלה. הסברים שונים ניתנו ע"י האמוראים לחובה זו:

> בר קפרא אמר איקונין אחת טובה היתה לי בתוך ביתך וגרמתני לכפותה אף אתה כפה מיטתך ואית דמפקין לישנא יכפה הסרסור רבי יונה ורבי יוסה תריהון בשם רבי שמעון בן לקיש חד אמר מפני מה הוא ישן על מיטה כפויה הוא בלילה ונזכר שהוא אבל.[200]

לגבי תשעה באב קיימת במשנה מחלוקת בעניין בין התנאים:

> „רבי יהודה מחיב בכפית המטה ולא הודו לו חכמים."[201]

193 בבלי מועד קטן כא ע"ב.
194 רובין, קץ החיים, 181.
195 תוספתא תענית ג יב (מהדורת ליברמן, 341).
196 ירושלמי תענית א ט, סד ע"ד: ראה: תוספתא כפשוטה, 1119.
197 ירושלמי מועד קטן ג:ח, פג ע"ד: בבלי מועד קטן כב ע"ב. ראה גם: רובין, קץ החיים, 109-110, 186.
198 בבלי כתובות ג ע"ב-ד ע"א: בבלי מועד קטן כג ע"א. ראה: רובין, קץ החיים, 187.
199 בבלי יבמות מג ע"ב.
200 ירושלמי מועד קטן ג ה, פג ע"א: ראה רובין, קץ החיים, 172-173: עוד על מנהג כפיית המיטה ראה ח' טלבי, מנהגי סעודת הבראה (דיסרטציה, אוניברסיטת בר אילן: רמת גן, תשמ"ט) 81-87.
201 משנה תענית ד ז: הנוסח: „ולא הודו לו חכמים" הוא ממשנת רבי יוסי, שרבי יהודה שיקע במשנתו. ראה: אפשטיין, מבואות, 303.

תנו רבנן ואלו דברים שאבל אסור בהם... ואסור לקרות בתורה ובנביאים ובכתובים ולשנות במשנה במדרש ובהלכות ובתלמוד ובאגדות ואם היו רבים צריכים לו אינו נמנע.[186]

עוד הקלו ואמרו: „תני אבל שונה הוא במקום שאינו רגיל."[187] דין זה הוחל גם על תשעה באב, כדברי הברייתא:

תנו רבנן כל מצות הנוהגות באבל נוהגות בתשעה באב... ואסור לקרות בתורה ובנביאים ובכתובים ולשנות במשנה במדרש ובתלמוד ובהלכות ובאגדות אבל קורא הוא במקום שאינו רגיל לקרות ושונה במקום שאינו רגיל לשנות וקורא בקנות ובאיוב[188] ובדברים הרעים שבירמיה ותינוקות של בית רבן אינן בטלין דברי רבי מאיר רבי יהודה אומר אף אינו קורא במקום שאינו רגיל לקרות ואינו שונה במקום שאינו רגיל לשנות אבל קורא הוא בקנות ובאיוב ובדברים הרעים שבירמיה ותינוקות של בית רבן בטלים בו משום שנאמר: „פקודי ה' ישרים משמחי לב."[189]

לפי הברייתא הטעם שאסור לאבל ללמוד תורה הוא מפני שדברי תורה משמחים, ואסור לאבל לשמוח ולהתענג בימי אבלותו, והוא הדין גם לתשעה באב. גם בהלכה זו, רבי יהודה מחמיר יותר מרבי מאיר. רבי יהודה אוסר בתשעה באב לקרוא במקום שאינו רגיל לקרוא, כי לדעתו עדיין יש בכך שמחה. הוא מתיר לקרוא רק בקינות, באיוב, ובדברים הרעים שבירמיהו, וזאת כדי להעצים את תחושת האבל והחלל הרוחני הריק שנוצר בעקבות החורבן. השבר הרוחני הכבד דורש לדבריו, גם לעשות מעשה חריג וקיצוני ולהשבית את לימוד תורה של תינוקות בית רבן. הלכה זו משתלבת עם הלכות מחמירות במיוחד של רבי יהודה בתשעה באב ומשקפת, כפי ששערנו, את השפעת חכמי לוד עליו. לעומתו רבי מאיר, חלק על רבי יהודה והתיר בתשעה באב, לקרוא במקום שאינו רגיל לקרוא, כמו לכל אבל, ואסר את השבתתם של תינוקות בית רבן. אולי גם בהלכה זו, ניתן לראות את השפעת רבו המובהק רבי עקיבא, שפעל בתחילת דרכו עם חכמי יבנה לשיקום האומה. לכן, רבי מאיר נמנע ממתן ביטויי אבל חריגים וקיצונים לתשעה באב. על מנהג קריאת מגילת איכה בתשעה באב, נמסר במסכת סופרים. היו שקראוה בערב והיו שקראוה בבוקר אחרי קריאת התורה.[190] רבי וחביריו עסקו במגילת איכה בערב והשלימו אותה בבוקר.[191]

שאילת שלום. אבל אסור בשאילת שלום.[192] בברייתא מובא שבשלושת הימים הראשונים,

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פרקים בתולדות בימי הבית השני (ירושלים: יד בן צבי, משרד הבטחון, תשמ"א) 186, 189. מ' בר, „תלמוד תורה ודרך ארץ," בר אילן ספר השנה ב (תשכ"ד) 151 ובהערות שם: והשווה לדעתו של א' אורבך, חז"ל: פרקי אמונות ודעות (ירושלים: הוצאת ספרים ע"ש י"ל מאגנס, תשל"ח) 546 ואילך.

186 בבלי מועד קטן כא ע"א.

187 ירושלמי שם.

188 ראה תבורי, מועדי ישראל, 401.

189 בבלי תענית ל ע"א.

190 מסכת סופרים יח ה (מהדורת היגער, 315–316).

191 ויקרא רבה טו ד (מהדורת מרגליות, עמ' שכח): ראה: תבורי, מועדי ישראל, 401: אולם לפי הנוסח שבמהד' וילנא הדבר התרחש ב„ערב תשעה באב שחל להיות בשבת עם חשיכה מן המנחה ולמעלה" (ראה משנה שבת טז א: בבלי שבת קטז ע"ב).

192 ירושלמי מועד קטן ג ה פב ע"ד: בבלי מועד קטן טו ע"א.

שתגלחת מוחלפת בתספורת, כשמות נרדפים. אפשר ללמוד כי תגלחת ותספורת הם מושגים מתחלפים, גם מן העובדה כי בכל מקום בו מוזכרת תגלחת לא מוזכרת תספורת, וכן להפך.[174]

נ׳ רובין הוסיף והסביר את טעם איסור תספורת ותגלחת באבלות:

בחברה היהודית, שמקפידה על חבריה בכל הנוגע לגוף וללבוש, ההיתר שלא לטפל בשיער משמש כמוצא לכעס ולהתרסה נגד העוול שבמוות.[175]

נוכח החלת דיני אבלות על תשעה באב, והדגשת האבל האישי ביום זה, דבריו אלה, מתאימים גם לגבי תשעה באב.

כביסה. איסור כביסה קיים באבלות.[176] נ׳ רובין הסביר זאת כך:

הבגד הוא מסמלי הסטטוס של האדם, הקובעים לו מקום בסביבתו כי הרי בין בני אדם עירומים לא ניתן להבחין בהבדלי מעמד. כאשר הבגדים אינם מכובסים, הם תורמים לטשטוש הסטטוס ולביטוי העירום הסמלי.[177]

מתוך דברי חכמי אושא[178] ומהמשנה,[179] האיסור קיים גם בתשעה באב, כי הוא איסור מאיסורי האבלות שהוחלו על תשעה באב. כפי שציינו לעיל, ההלכה התנאית המאוחרת, שהובאה אף היא בברייתא ובמשנה שם, הקלה בדיני אבלות של תשעה באב, והתירה לכבס לכבוד שבת, בתשעה באב שחל בערב שבת.

לבישת בגדים מגוהצים. איסור זה קיים בדיני אבלות[180] והוחל גם על תשעה באב.[181] הברייתא שם מציינת שכלי פשתן אין בהם משום גיהוץ. טעם האיסור הוא כטעם איסור כיבוס.[182]

תלמוד תורה. האבל אסור בתלמוד תורה.[183] ההלכה הקדומה קבעה איסור מוחלט וגורף בעניין זה, כפי שהדבר משתקף בברייתא:

אבל אסור בדברי תורה מדקאמר רחמנא ליחזקאל „דם״ („האנק דם״ יחזקאל כד, כז).[184]

בגלל חשיבות לימוד התורה,[185] ההלכה המאוחרת הקלה וקבעה שאם הרבים צריכים לו מותר:

174 רובין, קץ החיים, 175.
175 שם, 176.
176 ירושלמי שם.
177 שם, 178.
178 בבלי תענית כט ע״ב.
179 משנה תענית ד ז.
180 ירושלמי מועד קטן ג ה, פב ע״א: שם, ג ח, פג ע״ד: בבלי מועד קטן כז ע״ב: מסכת שמחות ז ח (מהדורת היגער, 139).
181 בבלי תענית כט ע״ב.
182 רובין, קץ החיים, 179.
183 ירושלמי שם: בבלי מועד קטן טו ע״א, כא ע״א.
184 בבלי מועד קטן טו ע״א.
185 משנה פאה א א: א׳ אדרת, מחורבן לתקומה, 226–227, 254: א׳ אופנהיימר, „חבורות שהיו בירושלים״

קוראים בתורה בתשעה באב. לפי הדעה שמסכת סופרים, תשעה באב אינה שונה מתענית ציבור אחרת, ולא חורגים מהכלל שקבעה המשנה, לכן גם בתשעה באב קוראים בברכות ובקללות שבספר ויקרא. אחרים סבורים שיש להבליט את ייחודיותו של תשעה באב ע״י שינוי מועט, לכן לדעת ת״ק בברייתא, ודעת „אחרים אומרים" שבתוספתא (במהד׳ ליברמן וצוקרמנדל), קוראים בספר ויקרא, תוך דילוג על הברכות ומתחילים מהקללות. אולם לפי דעתם של רבי נתן בר יוסף והיש אומרים שבברייתא, בתשעה באב חורגים מהכלל שבמשנה תוך הסתמכות על הכלל האחר לפיו יש לקרוא מעין המאורע, לכן קוראים מפרשת המרגלים, שהייתה לפי מסורת חז״ל בתשעה באב.[165] גם לפי הדעה שבתוספתא (מהד׳ צוקרמנדל) שקוראים „כי תוליד בנים," הטעם לכך הוא, כי תוכנה של הפרשה מתאים לתשעה באב המציין את החורבן והגלות שבאה אחריו. בפרשה זו מתואר שמשה רבנו צפה את הגלות, גילה את סיבתה, וציין שאם יעשו תשובה יזכו לגאולה ולנחמה.[166]

מתריעין. בשבע תעניות אחרונות מתריעין. מברייתא אחת משמע שהריעו בשופר,[167] אולם מברייתא[168] אחרת משמע שהריעו בחצוצרה. בתשעה באב לא הריעו, מאותה הסיבה שצויינה לעיל שלא הוסיפו תפילות ולא עשרים וארבע ברכות.

נעילת חנויות. בתעניות ציבור נועלים את החנויות, וגם האבל אבל אסור במסחר שלושים יום.[169] אולם למעשה הבחינו בין יציאה למסחר למקומות רחוקים אסור במשך שלושים יום, לבין משא ומתן מקומי שהוא אסור רק במשך ה„שבעה," כמו איסור מלאכה.[170] לגבי תשעה באב ציינו, שההלכה התנאית הקדומה אסרה מלאכה, ומאוחר יותר בימי התנאים הקלו, והדבר היה עניין שבמנהג, למעט תלמידי חכמים שחייבים היו להיות בטלים ממלאכתם. יש מקום לשער שהוא גם הדין לגבי מסחר בתשעה באב. אולי בתחילה, כשם שלא עשו מלאכה, כך גם לא סחרו, וממילא נעלו את החנויות. ההלכה המאוחרת שהקלה בדיני מלאכה, השפיעה גם על המסחר. כך שלא אסרו את המסחר ולא נעלו את החנויות. יחד עם זאת ההלכה התנאית קבעה שהחל מר״ח אב: „העם ממעטין בעסקיהם מלישא ומליתן מלבנות ולנטוע...."[171]

תספורת. האבל אסור בתספורת ותגלחת,[172] על קיום איסור תספורת בתשעה באב, אנו למדים מתוך מחלוקתם של חכמי אושא,[173] גם איסור זה נובע מהחלת דיני אבלות על תשעה באב. אולם, על אף שאיסור תגלחת לא נזכר בדבריהם של חכמי אושא, להלכה, לא קיימת הבחנה בין תגלחת לתספורת, כפי שציין נ׳ רובין, לגבי דיני אבלות:

> במקורות אין תמיד הבחנה בין תגלחת לתספורת: הם נלמדים כאיסור אחד, או

165 שם.

166 ראה ר״א ברבי נתן הירחי, ספר המנהיג (שני כרכים: ירושלים: מוסד הרב קוק, תשל״ח) א: הל׳ תשעה באב סימן כח, רצח, ב: הל׳ פסח, סימן ד, תכו.

167 בבלי תענית יד ע״א: וכן משמע מהירושלמי ר״ה ג ד, נח ע״ד שבימי האמוראים הריעו בשופר.

168 בבלי ר״ה כז ע״א: ראה גם בית יוסף, אורח חיים, סימן תקעט.

169 ירושלמי מועד קטן ג ח, פג ע״ד.

170 ראה: רובין, קץ החיים, 185–186.

171 בבלי יבמות מג ע״ב.

172 ירושלמי מועד קטן ג ה, פב ע״ד: בבלי מועד קטן יד ע״ב.

173 בבלי תענית כט ע״ב.

בתעניות שבאו לזיכרון לא הוסיפו תפילות מיוחדות. הבחנה זו יכולה לסייע להבין, מדוע בתשעה באב, לא הוזכרו עשרים וארבע ברכות, שנאמרו בתעניות ציבור.[153] במסכת סופרים מצויין שמוסיפים פסוקים אחדים בתפילת הערב,[154] ובימי האמוראים אנו שומעים לראשונה על שינוי בתפילת היחיד בתענית ציבור להזכיר „מעין המאורע" בתפילת ענינו, ותפילת רחם בתשעה באב.[155]

קריאה בתורה. המשנה מציינת שבתעניות צבור קוראים „ברכות וקללות,"[156] אין לדעת אם כוונת המשנה היא לברכות ולקללות שבספר ויקרא (כו, א–מו), או של ספר דברים (כח, א–סט). לפי המשנה שם אין להפסיק בקריאתן אלא אחד קורא את כולן. בברייתא אחרת נאמר:

> זה הכלל כל שיש בו ביטול מלאכה לעם כגון תענית צבור ותשעה באב קורין שלשה.[157]

הברייתא מציינת מנהגי קריאה שונים בתשעה באב:

> בתשעה באב... מקרא מאי תניא אחרים אומרים „ואם לא תשמעו לי" (ויקרא כו, יד) רבי נתן בר יוסף אומר „עד אנא ינאצני העם הזה" (במדבר יד, יא) ויש אומרים „עד מתי לעדה הרעה הזאת" (שם, כו).[158]

בתוספתא במהד' ליברמן מובא: „בתשעה באב אחרים אומ' ,ואם לא תשמעו לי'"[159] ובמהד' צוקרמנדל: „בתשעה באב קורין ,כי תוליד בנים' (דברים ד, כה) אחרים אומ' ,אם לא תשמעו.'"[160] במסכת סופרים מובא שברכות וקללות קוראים בתשעה באב ובשבע תעניות אחרונות של הגשמים, אבל בתעניות אחרות „ויחל משה" (שמות לב, יא).[161]

יש להבין מדוע נחלקו התנאים בעניין קריאת התורה בתשעה באב? נראה שבגלל המשמעות המיוחדת של תענית תשעה באב החמורה יותר מתענית ציבור רגילה, בגלל המאורעות החמורים שלפי מסורת חז"ל התרחשו בהם,[162] היו חכמים שביקשו להיצמד לכלל הלכתי אחר, הקובע שיש לקרוא מעין המאורע בזמנו: „מצותן שיהיו קורין אותן כל אחד ואחד בזמנו,"[163] וכפי שהמשנה מפרטת לגבי כל המועדים, שקוראים בהם מענייני היום,[164] כך לדעתם יש גם לנהוג בתשעה באב. לנוכח זאת קיימת מחלוקת בין התנאים, מה

153 לפי הברייתא שבתלמוד הבבלי „סדר תעניות" שבמשנה תענית ב א–ד שכלל גם אמירת עשרים וארבע ברכות, היה רק בשבע תעניות אחרונות. אולם מהתוספתא משמע שסדר זה נהג בכל תענית ציבור ראה תוספתא תענית ב ד (מהדורת ליברמן, 330): ליברמן, תוספתא כפשוטה, 1085–1086.

154 ראה י"מ אלבוגן, התפילה בישראל בהתפתחותה ההיסטורית (תל אביב: דביר, תשמ"ח) 97 (להלן, אלבוגן, התפילה).

155 ירושלמי תענית ב ב, סה ע"ג: בסידור רב עמרם גאון כתובה הגירסה הפותחת ב„נחם" שעברה גם אל ספרד ואשכנז שמוצאה כנראה מבבל, ראה אלבוגן, התפילה, שם: ראה עוד תבורי, מועדי ישראל, 411–412.

156 משנה מגילה ג ו.

157 בבלי מגילה כב ע"ב.

158 בבלי מגילה לא ע"ב.

159 תוספתא מגילה ג ט (מהדורת ליברמן, 355).

160 תוספתא מגילה ד ט (מהדורת צוקרמנדל, 225): ראה: ליברמן, תוספתא כפשוטה, 1173–1174.

161 מסכת סופרים יז ה (מהדורת היגער, 303–304).

162 משנה תענית ד ו.

163 משנה מגילה ג ו: מסכת סופרים יא (מהדורת היגער, 209 ובהערות שם).

164 משנה מגילה ג ה–ו.

באבלות.[142] במקרים מיוחדים הותר לנעול את הסנדל:

> תני אבל ומנודה שהיו מהלכין בדרך מותרין בנעילת הסנדל לכשיבואו לעיר יחלוצו וכן בתשע׳ באב.[143]

תשמיש המיטה. תשמיש המיטה נאסר בתעניות ציבור של שלוש אמצעיות ושבע אחרונות ובאבלות,[144] כדי למנוע תענוג. לכן, נאסר תשמיש המיטה גם בתשעה באב.[145]

נעילת מרחצאות. כפי שציינו לעיל אצל רחיצה, יש מקום להניח שנעלו את המרחצאות בתשעה באב, כי נאסרה כל רחיצה שהיא בחמין וגם בצונן.

תפילות. לגבי תעניות ציבור המשנה מציינת:

> בשלשה פרקים בשנה כהנים נושאין את כפיהן ארבע פעמים ביום בשחרית במוסף ובמנחה ובנעילת שערים בתעניות ובמעמדות וביום הכפורים.[146]

גם התוספתא מציינת:

> תענית צבור כהנים נושאין כפיהן ארבע פעמים ביום מה שאין כן בתענית יחיד.[147]

מכאן שבכל תעניות ציבור התפללו ארבע תפילות.[148] במקורות התנאיים אין איזכור לתפילות מוסף ולנעילה בתשעה באב. במקורות מאוחרים יותר שבתלמוד הבבלי נאמר שאין תפילת נעילה בתשעה באב.[149] התלמוד מזכיר: „מוסף תפילה,"[150] והיו שרצו לפרש בסוגיא שם, שהכוונה היא לתפילת מוסף שנאמרה בתעניות ציבור וגם בתשעה באב.[151] נראה הדבר שרק על צרות שהתרגשו ושהוזכרו במשנה בתענית: כעצירת גשמים, מגיפות, מפולת וכד׳, על צרות אלה הוסיפו תפילות מיוחדות, כדי לעורר את העם לחזרה בתשובה ולהעביר את רוע הגזירה. אולם שונה הדבר בתענית ציבור שנקבעה על צרה שהיתה בעבר, שהיא „אבלות ישנה." שם, התענית באה בעיקרה לזיכרון העבר, ואף שיש שם עניין של תשובה לתקן את המעשים, בעיקרה היא באה לזיכרון, ולא לבטל את רוע הגזירה, כי ברגע זה אין גזירה,[152] לכן

142 ירושלמי מועד קטן ג ה, פב ע״ד: בבלי מועד קטן טו ע״ב: מסכת שמחות ו א (מהדורת היגער, 130–131).
143 ירושלמי שם.
144 ירושלמי שם.
145 בבלי תענית ל ע״א.
146 משנה תענית ד א.
147 תוספתא תענית ב ד (מהדורת ליברמן, 331).
148 כך גם בסוגית הירושלמי על המשנה: „את שמע מינה תלת שמע מינה... ושמתפללים ארבע" (ירושלמי תענית ד א, סז ע״ב). ראה גם הלבני, מקורות, א:תלא, ב:תנו-תנז, תק-תקא. אולם בסוגיית הבבלי: „תעניות ומעמדות מי אית בהו מוסף חסורי מחסרא והכי קתני בשלשה פרקים בשנה כהנים נושאין את כפיהן כל זמן שמתפללין ויש מהן ארבעה פעמים ביום בשחרית במוסף במנחה ובנעילה ואלו הן שלשה פרקים תעניות ומעמדות ויום הכפורים" (בבלי תענית כו ע״ב).
149 בבלי פסחים נד ע״ב.
150 בבלי מגילה כב ע״א.
151 הלבני, מקורות ב:תק-תקא.
152 בית יוסף, אורח חיים, סימן קעט.

שעם גמר הסעודה המפסקת הריהו כמקבל עליו את כל חומרות תשעה באב.[133] דומה שתהיה נפקא מינא בין שני הטעמים כשאוכל סעודה מפסקת בבוקר. לפי ההסבר הראשון אם הוא יתרחץ אחרי הסעודה, אין רחיצה זו בשעת הבוקר נראית כרחיצה לתשעה באב, אלא עדיין ליום זה (ח׳ באב). אך לפי ההסבר השני הוא מקבל עליו מיד לאחר הסעודה את כל חומרות יום כיפור וממילא אסור יהיה לו להתרחץ. רבי ישמעאל ברבי יוסי, מוסר משמו של אביו, שהוא חולק על הלכה זו. לפי הנוסח שבתוספתא רבי יוסי סבור שבכל שעה שמותר לאכול, כלומר עד כניסת ליל תשעה באב, מותר לרחוץ פניו, ידיו ורגליו. לפי נוסח זה לא ברור עד מתי מותר לרחוץ את כל הגוף. אולם בנוסח הברייתא מצוין סתם, שכל שעה שמותר לאכול מותר גם לרחוץ. לפי נוסח זה, כנראה שהכוונה להיתר רחיצת כל הגוף, ולא רק פניו, ידיו ורגליו.[134] ניתן לשער שבדורות הראשונים לאחר החורבן היו שהחמירו ואסרו רחיצה לאחר אכילת סעודה מפסקת, שנאכלה כמנהג רווח בעם סמוך לכניסת ליל תשעה באב. אך בדורות התנאים המאוחרים יותר הרחיצה נאסרה רק מכניסת תשעה באב. הדבר משתקף במשנה, בכך שרבי יהודה הנשיא הביא במשנתו רק את המחלוקת בין התנאים, בעניין אכילת בשר ושתיית יין בערב תשעה באב, תוך התעלמות מעניין הרחיצה. כך שבדורו של רבי יהודה הנשיא, איסור רחיצה היה רק בתשעה באב ולא קודם לכן. יחד עם זאת התקיים דיון לגבי חייבי טבילה בתשעה באב. האם מפאת היותה חובה, מותר לעשותה בתשעה באב ואין היא תחשב כרחיצת תענוג, או שיש מקום לאוסרה. המסורת התנאית מלמדת על מחלוקת בנושא זה, וכך שנינו בברייתא:

> כל מחוייבי טבילות טובלין כדרכן בתשעה באב וביום הכיפורים אמר ר׳ חנינא סגן הכהנים כדיי הוא ביתו של אלהינו שיאבדו עליו הכהנים טבילה אחת.[135]

נראה שבקרב החכמים הייתה כבר מחלוקת ישנה לגבי טבילה ביום כיפורים, ומאוחר יותר החילו את המחלוקת גם על תשעה באב.

סיכה. סיכה אסורה בתעניות ציבור של שלוש אמצעיות, שבע אחרונות וכן ובאבלות,[136] מטרת האיסור הוא למנוע עונג.[137] הברייתא קבעה שכל הנוהג באבל נוהג גם בתשעה באב, ומצויין שם איסור סיכה.[138] הברייתא מציינת:

> בתשע׳ באב ובתענית ציבור סיכה שהיא של תענוג אסור שאינה של תענוג מותר.[139]

נעילת סנדל. בתעניות ציבור של שלוש האמצעיות ושבע אחרונות ובאבלות נאסר על נעילת הסנדל, וזאת כדי למנוע עונג.[140] הברייתא[141] מציינת, שנעילת סנדל אסורה בתשעה באב כמו

133 ראה ליברמן, תוספתא כפשוטה, 1118.
134 שם, 1117–1118.
135 ירושלמי ביצה ב ב סא ע״ב: בבלי תענית יג ע״א.
136 בבלי מועד קטן טו ע״ב: ירושלמי מועד קטן ג ה, פב ע״ד: ירושלמי ברכות ב ז, ה ע״ד.
137 רובין, קץ החיים, 174.
138 בבלי תענית ל ע״א.
139 ירושלמי תענית א ו, סד ע״ג: ירושלמי יומא ח א , מד ע״ד: מכאן מסיקים שסיכה שאינה של תענוג מותרת גם באבל, ראה רמב״ם (ירושלים: מוסד הרב קוק, תשמ״ה) הל׳ אבל ה ד, הערה יט.
140 ראה: רובין, קץ החיים, 177.
141 בבלי תענית ל ע״א.

רבי עקיבא[125] אומר כל העושה מלאכה בתשעה באב אינו רואה סימן ברכה לעולם.[126]

קשה לקבוע אם לפנינו ברייתא עתיקה המבקשת לחזק את ההלכה הקדומה שאסרה מלאכה, והיא מוסיפה שהעושה מלאכה לא יראה בה סימן ברכה. או שלפנינו ברייתא מאוחרת, המלמדת שעל אף שמותר לעשות מלאכה במקום שנהגו, העושה מלאכה אינו רואה סימן ברכה מאותה מלאכה.

רחיצה. בתעניות ציבור בשלוש אמצעיות ובשבע אחרונות אסור לרחוץ את כל הגוף בחמין, לכן נעלו את המרחצאות, אך מותר לרחוץ בחמין פניו ידיו ורגליו. באבלות אסורה כל רחיצה שהיא.[127] הברייתא[128] מציינת שבתשעה באב אסורה רחיצה, כמו באבלות.[129] איסור רחיצה בתענית ציבור ובאבלות נועד למנוע עונג, לכן רחיצה שאינה של תענוג אלא לצורך, הותרה אפילו ביום כיפורים, כדברי הברייתא:

> היה הולך אצל רבו או אצל בתו ועבר בים או בנהר אינו חושש ניטנפו רגליו מטבילן במים ואינו חושש.[130]

מברייתא זו למדים, שרחיצה לצורך מותרת מקל וחומר, גם באבלות וגם בתעניות ציבור. קיימת שיטה תנאית הסבורה, שאיסור רחיצה מתחיל עוד לפני כניסת היום, בדומה לאיסורים של אכילת בשר, לאיסור שתיית יין, ולאיסור אכילת שני תבשילין, כדברי התוספתא:

> כל שהוא מסעודת תשעה באב אסור לוכל בשר ואסור לשתות יין ואסור לוכל שני תבשילין ואסור לרחוץ ולסוך וכל שאינו מסעודת תשעה באב מותר לוכל בשר ולשתות יין ומותר לוכל שני תבשילין ומותר לרחוץ ולסוך ר׳ ישמע׳ בי ר׳ יוסה אומ׳ משם אביו כל שעה שמותר לוכל מותר לרחוץ פניו ידיו ורגליו.[131]

בדומה לכך שונה הברייתא:

> כל שהוא משום תשעה באב אסור לאכול בשר ואסור לשתות יין ואסור לרחוץ כל שאינו משום תשעה באב מותר לאכול בשר ולשתות יין ומותר לרחוץ רבי ישמעאל ברבי יוסי אומר משום אביו כל שעה שמותר לאכול מותר לרחוץ.[132]

לדעת ת״ק בתוספתא ובברייתא, איסור רחיצה חל מהסעודה המפסקת. הראשונים נתנו לכך טעמים שונים. יש שפירשו שהרוחץ לאחר סעודה מפסקת, כיון שאין רחיצתו עוד עבור יום זה הריהו כאילו הוא רוחץ לצורך תשעה באב. אחרים פירשו שעיקר הדבר תלוי בכך

125 כך בנוסח הדפוס, אולם מפאת השינויים שבין כתבי היד שבחלקם אין שמו מוזכר, ספק רב אם ניתן לייחס את הדברים אליו. ראה: מלטער, תענית, 144.

126 בבלי תענית ל ע״ב.

127 בבלי מועד קטן טו ע״ב: ירושלמי מועד קטן ג ה, פב ע״ד: ירושלמי ברכות ב ז, ה ע״ב.

128 בבלי תענית ל ע״א.

129 ירושלמי יומא ח א, מד ע״ד: אם רחיצה אסורה גם בצונן ראה דיון אצל רובין, קץ החיים, 174, ויש לכך השלכות לגבי תשעה באב. אין עוררין שבחמין בודאי אסור והוא הדין גם לתשעה באב, לכן יש להניח שבתשעה באב נעלו את המרחצאות כמו בתענית ציבור, ראה להלן.

130 ירושלמי תענית א ו, סד ע:ג: ירושלמי יומא ח א, מד ע״ד.

131 תוספתא תענית ג יא (מהדורת ליברמן, 341).

132 בבלי תענית ל ע״א.

זאת בכך ש„איסורי מלאכה ומסחר מבטאים את הבידוד בתחום האינסטרומנטלי."[117]

החלת דיני תענית ציבור ואבלות על תשעה באב הביאה בתחילה גם לאסור מלאכה בתשעה באב. עדות לכך קיימת בנוסח הברייתא שבכת"י אוכספורד המציינת שבתשעה באב אסורה מלאכה.[118] בדורות התנאים המאוחרים הקלו במלאכה, כפי שניתן ללמוד מהברייתא הקובעת:

> זה הכלל כל שיש בו ביטול מלאכה לעם כגון תענית צבור ותשעה באב קורין שלשה.[119]

איסור מלאכה הפך להיות דבר שבמנהג. מציאות מאוחרת זו משתקפת במשנה:

> מקום שנהגו לעשות מלאכה בתשעה באב עושין מקום שנהגו שלא לעשות מלאכה אין עושין.[120]

לגבי תלמידי חכמים שונה המשנה מחלוקת:

> ובכל מקום תלמידי חכמים בטלים רבן שמעון בן גמליאל אומר לעולם יעשה אדם עצמו תלמיד חכם.[121]

לפנינו מחלוקת בין ת"ק לרשב"ג. הדעה המחמירה מייצגת את ההלכה הקדומה, לפיה החמירו בדיני תשעה באב, לכן נאסר על ת"ח לעשות מלאכה, גם במקום שמאוחר יותר נהגו בו לעשות מלאכה. אולם באשר לדברי רשב"ג נחלקו בבבלי ובירושלמי. לפי הבבלי רשב"ג מחמיר ואומר שכל אדם יעשה עצמו תלמיד חכם ולא יעשה מלאכה, ואין בכך חשש ליוהרא מהטעם: „אמרי מלאכה היא דלית ליה פוק חזי כמה בטלני איכא בשוקא."[122] אפשר גם להסביר את דבריו בהתאם למה שאמר במקום אחר:

> ר' שמעון בן גמליאל או' דבר שהוא של צער הרוצה לעשות עצמו יחיד עושה תלמיד חכם עושה ותבא עליו ברכה.[123]

אולם בירושלמי ניתנה לרשב"ג, משמו של רבי יהודה נשיאה, פרשנות הפוכה לחלוטין:

> רבי אבון רבי שמעון בן לקיש בשם רבי יודן נשייא כמתמיה יעשו כל אדם עצמן תלמידי חכמים כל עצמן לא גזרו חכמים בטלה בתשעה באב.[124]

נראה לנו, שיש מקום להעדיף את הסברו של רבי יהודה נשיאה, בעיקר בגלל היותו קרוב לבעל השמועה, במשרת הנשיאות שעברה אליו בירושה, והן מפני שכבר ראינו שרשב"ג הקל בדיני תשעה באב, ויש להניח שגם כאן הוא הקל. בעניין איסור מלאכה מובא בברייתא:

117 רובין, קץ החיים, 182.
118 בבלי תענית ל ע"א.
119 בבלי מגילה כב ע"ב.
120 משנה פסחים ד ה.
121 שם.
122 בבלי פסחים נה ע"א; בבלי ברכות יז ע"ב; בבלי תענית ל ע"ב.
123 תוספתא תענית א ז (מהדורת ליברמן, 324-325); ירושלמי ברכות ב ח, ה ע"ג-ע"ד. ראה עוד ש' ליברמן, הירושלמי כפשוטו (ירושלים: הוצאת דרום: תרצ"ה) 441; אפשטיין, מבוא לנוסח המשנה, 252; גינצבורג, פירושים, א:400-401; הלבני, מקורות, עמ' תכב הערה 5; ז"ו רבינוביץ, שערי תורת ארץ ישראל (ירושלים: ז' רבינוביץ, ת"ש) 222; א' עמית, מהדורה ופירוש מקיף לפרק „מקום שנהגו" בבלי פסחים פרק רביעי (דיסרטציה, אוניברסיטת בר אילן: רמת גן תש"ס) 264-271.
124 ירושלמי פסחים ד ה, לא ע"א.

אין בין תשעה באב ליום הכיפורים אלא שזה ספיקו אסור וזה ספיקו מותר.[107]

במקורות התנאיים לא הוסברה הלכה זו,[108] וגם אין לדעת ממתי קביעה זו, האם לפנינו הלכה קדומה, או הלכה מדורות מאוחרים יותר שבהם מסתמנת מגמה של הקלה בדיני תשעה באב.

ביום תשעה באב, מן המנחה ומעלה, מותר להכין צרכי סעודה למוצאי תשעה באב, כאמור בתוספתא: „מתקנין מט׳ באב למוצאי ט׳ באב."[109] כשתשעה באב חל בשבת אומרת הברייתא:

דתניא תשעה באב שחל להיות בשבת וכן ערב תשעה באב שחל להיות בשבת אוכל ושותה כל צורכו ומעלה על שלחנו אפילו כסעודת שלמה בשעתו.[110]

כשחל תשעה באב להיות בערב שבת, נחלקו התנאים:

תשעה באב שחל להיות ערב שבת אוכל אפילו ביצה אחת ושותה אפילו כוס אחד כדי שלא יכנס לשבת מעונה דברי רבי יודה רבי יוסי אומר מתענה ומשלים... אית תני ומחלף דברי חכמים.[111]

נראה, שלאור החומרות של רבי יהודה שצוינו לעיל בכל הנוגע לדיני האבלות של תשעה באב, יש מקום להניח שהוא התנא הסבור שמתענה ומשלים,[112] בכך משתלבת חומרה זו עם שאר חומרותיו. התייחסות לתשעה באב שחל להיות בע"ש מצויה גם במשנה:

אין גוזרין תענית על הצבור בראש חדש בחנכה ובפורים ואם התחילו אין מפסיקין דברי רבן גמליאל אמר רבי מאיר אף על פי שאמר רבן גמליאל אין מפסיקין מודה היה שאין משלימין וכן תשעה באב שחל להיות בערב שבת.[113]

המשנה מציינת שגם בתשעה באב שחל להיות בערב שבת שלא משלימים את התענית. אם אמירה זו היא מדברי רשב"ג, הדבר תואם את מגמת ההקלה של רשב"ג כפי שהשתקפה עמדתו גם בהלכות האחרות של תשעה באב. אך גם אם דברים אלה הם של רבי מאיר,[114] הדבר תואם את עמדתו המתונה יחסית, כתלמידו המובהק של רבי עקיבא, כפי שגם היא באה לידי ביטוי בהלכות נוספות של תשעה באב, שצוינו לעיל.

מלאכה. מלאכה נאסרה בתענית ציבור בשלוש אמצעיות ובשבע אחרונות רק ביום ולא מהלילה קודם. חז"ל הפליגו בחומרת עשיית מלאכה בתענית ציבור ואמרו: „העושה מלאכה בתענית צבור כעושה מלאכה ביום הכיפורים."[115] גם האבל אסור בעשיית מלאכה,[116] נ׳ רובין הסביר

107 בבלי פסחים נד ע"ב.

108 על פרשנות האמוראים ראה: בבלי פסחים נד ע"ב.

109 תוספתא תענית ד יב (מהדורת ליברמן, 341) ראה: ש׳ ליברמן, תוספתא כפשוטה (עשרה כרכים: נוי יורק: בית מדרש לרבנים שבאמריקה, תשט"ו-תשמ"ח) ה:1119-1120 (להלן, ליברמן, תוספתא כפשוטה).

110 בבלי תענית כט ע"ב.

111 ירושלמי תענית ב טו, סו ע"ב: תוספתא תענית ב ז (מהדורת ליברמן, 332): בבלי ערובין מ ע"א.

112 אולם ראה: תוספתא כפשוטה, 1092.

113 משנה תענית ב י.

114 ראה ד׳ הלבני, מקורות ומסורות ביאורים לתלמוד מסכתות עירובין ופסחים (ששה כרכים: ירושלים: הוצאת ספרים ע"ש י"ל מאגנס, בית מדרש לרבנים באמריקה, תשמ"ב) ב:קכא (להלן, הלבני, מקורות).

115 ירושלמי תענית א ו, סד ע"ג: ירושלמי יומא ח א, מד ע"ד.

116 בבלי מועד קטן טו ע"ב.

תענית ציבור	אבלות	תשעה באב
נעילת מרחצאות[98]		נעילת מרחצאות
תפילות[99]		
קריאה בתורה[100]		קריאה בתורה[101]
מתריעין[102]		
נעילת חנויות[103]	איסור מסחר	
	איסור תספורת ותגלחת	איסור תספורת ותגלחת
	איסור כיבוס	איסור כיבוס
	איסור לבישת בגדים מגוהצים	איסור לבישת בגדים מגוהצים
	איסור תלמוד תורה	איסור תלמוד תורה
	איסור שאילת שלום	איסור שאילת שלום
	איסור הליכה לבית משתה	איסור הליכה לבית משתה
	איסור נישואין	איסור נישואין
	חובת קריעה	
	חובת חליצת כתף	
	חובת עטיפת הראש	
	חובת כפיית המיטה	חובת כפיית המיטה (מחלוקת)

אכילה ושתיה. ציינו בתחילת המאמר, שההלכה התנאית, ראתה בדברי הנביא זכריה, המזכיר את „צום החמישי" כמתייחס לתשעה באב, שבו לפי המסורת התנאית, חרב הבית הראשון, ואח"כ גם בית שני, לכן הוא נקבע כיום תענית ציבור. כנראה עקב כך לא קיימת הלכה תנאית מיוחדת המציינת איסור זה של אכילה ושתיה. די היה בציון העובדה שתשעה באב הוא יום תענית ציבור, ממילא חלים בו כל דיני תענית ציבור שבמרכזם איסור אכילה ושתיה. אולם במקצת מכתבי היד של התלמוד הבבלי איסור אכילה ושתיה בתשעה באב, הוזכר בברייתא במפורש.[104] לגבי עוברות ומניקות בתענית ציבור יש שלוש ברייתות שונות:

> תני חדא עוברות ומיניקות מתענות בראשונות ואין מתענות באחרונות ותניא אידך מתענות באחרונות ואין מתענות בראשונות ותניא אידך אין מתענות לא בראשונות ולא באחרונות.[105]

בעניין תשעה באב נקבע: ש: „העוברות והמניקות מתענות בתשעה באב וביום הכפורים."[106] יחד עם זאת נקבע שקיים הבדל בין יום כיפורים לתשעה באב:

98 בשלוש אמצעיות ובשבע אחרונות.
99 משנה תענית ד א.
100 משנה מגילה ג ו.
101 בבלי מגילה לא ע"ב.
102 רק בשבע אחרונות.
103 רק בשבע אחרונות.
104 בבלי תענית ל ע"א, ראה: מלטער, תענית, 142 בהערות לשורה 12.
105 בבלי תענית יד ע"א.
106 תוספתא תענית ב יד (מהדורת ליברמן, 335): בבלי תענית יד ע"א: ירושלמי תענית א ה, סד ע"ג.

ערב תשעה באב לא יאכל אדם שני תבשילין לא יאכל בשר ולא ישתה יין רבן שמעון בן גמליאל אומר ישנה.[84]

כחלק ממגמת הסטנדרטיזציה של ההלכה, של קביעת שיעורים אובייקטיבים מוחלטים,[85] בחר רבי יהודה הנשיא להתעלם מהדעה הקובעת אמת מידה אישית סובייקטיבית, לפיה כל אחד רשאי, בכל שעה משעות היום, להחליט ממתי יחל האיסור לגביו.

ההלכה התנאית הוסיפה עוד וקבעה: „תנא אבל אוכל בשר מליח ושותה יין מגתו."[86] אין לדעת ממתי הלכה זו. יתכן שהיא נקבעה כבר בדור אושא, ובהמשך לקולא זו קבע גם רשב"ג: ש: „אם היה רגיל לאכול אחר סעודתו צנון או מליח הרשות בידו." או שזו קולא מאוחרת של דורות התנאים המאוחרים, המבוססת אולי על הקולא של רשב"ג.

שלב ד: יום תשעה באב

כפי שכבר צוין לעיל, תשעה באב משלב את דיני תענית ציבור ודיני אבלות. ניתוח ההשוואה ביניהם, מלמד על דינים שיש להוסיפם לתשעה באב על אף שלא הוזכרו במפורש במקורות התנאיים. הוספות אלה יוצגו בהבלטה ובשינוי צורת האותיות. להלן ההשוואה ולאחריה הניתוח וההסבר.

תענית ציבור[87]	אבלות[88]	תשעה באב[89]
איסור אכילה ושתיה[90]		איסור אכילה ושתיה[91]
איסור מלאכה[92]	איסור מלאכה	איסור מלאכה[93]
איסור רחיצה[94]	איסור רחיצה	איסור רחיצה
איסור סיכה[95]	איסור סיכה	איסור סיכה
איסור נעילת הסנדל[96]	איסור נעילת הסנדל	איסור נעילת הסנדל
איסור תשמיש המיטה[97]	איסור תשמיש המיטה	איסור תשמיש המיטה

84 משנה תענית ד ז.

85 ראה י"ד גילת, פרקים בהשתלשלות ההלכה (רמת גן: אוניברסיטת בר אילן, תשנ"ב) 28–29.

86 בבלי תענית ל ע"א: בבלי סנהדרין ע ע"א:

87 משנה תענית א ה–ז: ב: א–ד: ד א: לגבי אנשי משמר ראה שם ב ו.

88 לפי סיכום של רובין, קץ החיים, 160.

89 בבלי תענית כט ע"ב–ל ע"ב.

90 בכל תעניות הציבור, אולם בשלוש ראשונות מותר לאכול בלילה שלפני התענית. לגבי עוברות ומניקות יש שלוש ברייתות בבלי תענית יד ע"א „תני חדא עוברות ומניקות מתענות בראשונות ואין מתענות באחרונות ותניא אידך מתענות באחרונות ואין מתענות בראשונות ותניא אידך אין מתענות לא בראשונות ולא באחרונות."

91 כך בכת"י אוכספורד ראה: מלטער, תענית, 142, הערות לשורה 12.

92 בשלוש אמצעיות ובשבע אחרונות, האיסור הוא ביום ולא בלילה, ראה בבלי תענית יב ע"ב.

93 כגירסת כת"י אוכספורד, וראה עוד להלן.

94 בשלוש אמצעיות ובשבע אחרונות, האיסור הוא לרחוץ כל הגוף בחמין אבל פניו ידיו ורגליו מותר, ראה בבלי תענית יג ע"א.

95 בשלוש אמצעיות ובשבע אחרונות, האיסור הוא על סיכה של תענוג ראה ירושלמי תענית א ו, סד ע"ג.

96 בשלוש אמצעיות ובשבע אחרונות.

97 בשלוש אמצעיות ובשבע אחרונות.

דעת תנא קמא שבברייתא הראשונה קובעת, שבערב תשעה באב אסור לאכול בשר, אסור לשתות יין, ואסור לאכול שני תבשילין. אין בדבריו הגבלה באשר לתחילת זמן האיסור, כך שניתן להבין שהאיסור חל מתחילת היום, הוי אומר מעלות השחר.

הדעה השניה שם, היא דעתו המקלה של רבן שמעון בן גמליאל, שאינו אוסר את מה שאסר תנא קמא אלא רק מסתפק בשינוי. ההסבר שמופיע בהמשך לטיבו של השינוי, מעמיד בספק אם פיסקא זו היא חלק מהברייתא או שזו תוספת מאוחרת. אשר לזהותו של בעל המימרא, הגרסאות בכתבי היד הן שונות. בכתבי יד אחדים הגרסא היא: „רבי יהודה," ובכתבי יד אחרים הגרסא היא: „רב יהודה." גם אם נקבל את הגרסא: „רבי יהודה," עדיין ניתן לפרש זו תוספת מאוחרת לברייתא, ובכל מקרה, אין המדובר בדברי רשב"ג עצמו. בודאי אם נקבל את הגרסא „רב יהודה," הכוונה לאמורא רב יהודה, ואז ברור הדבר, שאין פיסקה זו חלק מהברייתא. מקבילה לתיאור אופן השינוי מצויה גם בירושלמי:

> מהו ישנה יחלף אין הוה אכיל ליטרא דקופד ייכול פלג׳ אין הוה יליף שתי קסט דחמר ישתה פלגא.[82]

אין לדעת אם סתמא דתלמודא הביא פיסקה זו מתוך ברייתא, כך שבמקור אולי גם פיסקה זו הייתה בברייתא, או שזו השלמה מאוחרת של סתמא דסוגיא. בהמשך הברייתא, צוינה ההגבלה משש שעות ומעלה. גם כאן אין לדעת, אם לפנינו המשך דברי רבי יהודה, רב יהודה, או שזו תוספת מאוחרת, כך שלפנינו דעה נוספת.

הברייתא הראשונה, מציינת את דעת רבי מאיר שדעתו תואמת את דעת ת"ק שבברייתא השניה. דעתם של חכמים שבברייתא הראשונה תואמת בחלקה לדעת רשב"ג שבברייתא השניה, כי במקרה שהוא אינו רגיל כל עיקר לאכול בשר ולשתות יין, אז אסור לו כלל לאכול בשר ויין בערב תשעה באב. רשב"ג, מקל עוד, וקובע: ש: „אם היה רגיל לאכול אחר סעודתו צנון ומליח הרשות בידו." כנראה שלדעתם של ר"מ ות"ק האיסור מתחיל בתחילת היום, עם עלות השחר. בנוסף לדעות התנאים שהוזכרו, הייתה קיימת דעה תנאית אחרת, המסכימה באופן עקרוני עם דעתם של ת"ק שבברייתא הראשונה, ושל רבי מאיר בברייתא השנייה, אולם לפיה האיסור הוא רק בסעודה הנאכלת משום תשעה באב, כמובא בתוספתא:

> כל שהוא מסעודת תשעה באב אסור לוכל בשר ואסור לשתות יין ואסור לוכל שני תבשילין... וכל שאינו מסעודת תשעה באב מותר לוכל בשר ולשתות יין ומותר לוכל שני תבשילין....[83]

לפי דעה זו, האיסור חל בסעודה מפסקת של כל אחד ואחד, ואינו קשור לשעה מסוימת של היום. לפיכך הדין יחול, גם אם יאכל סעודה מפסקת בבוקר, על אף שאין הדבר מצוי שאדם יקדים כל כך לאכול סעודה מפסקת. רבי יהודה הנשיא, בחר לשקע במשנתו רק את שתי הדעות הקיצוניות, זו האוסרת לחלוטין ולעומתה הדעה שאינה אוסרת כלל, ומסתפקת בשינוי. הדעה המחמירה היא דעת ר"מ בברייתא הראשונה, שהיא גם דעת ת"ק בברייתא השניה, ומנגד את דעת רשב"ג אביו המקל, וכך שנינו במשנה:

82 ירושלמי תענית ד יא, סט ע"ג.

83 תוספתא תענית ג יא (מהדורת ליברמן, 341): השווה לבבלי תענית ל ע"א.

הראיה שרבי יהודה האומר „ובחמישי מתרין" ההיתר פורש והובן ע"י הברייתא המאוחרת הנ"ל כמתייחס אך ורק לכיבוס ולא לתספורת, כפי שמפרש רש"י בסוגיא שם.[75]

שלב ג: ערב תשעה באב

החמרה נוספת קיימת בערב תשעה באב, שהוא היום שלפני תשעה באב.[76] יום זה נושא אופי של מקצת דיני אנינות, שלאחריהם, בתשעה באב יש את דיני אבלות. האונן, הוא זה שמתו מוטל לפניו, פטור מכל המצוות האמורות בתורה, ואסור באכילת בשר ובשתיית יין.[77] התחושה של אונן משתקפת בהתנהגותו של רבי יהודה בר אילעאי, כפי שמוסר האמורא הבבלי רב יהודה בשם רב:

> אמר רב יהודה אמר רב כך היה מנהגו של רבי יהודה בר אלעאי ערב תשעה באב מביאין לו פת חרבה במלח ויושב בין תנור לכירים ואוכלה ושותה עליה קיתון של מים ודומה כמי שמתו מוטל לפניו.[78]

חכמי אושא החילו מקצת מדיני אנינות, איסור אכילת בשר ושתיית יין גם על ערב תשעה באב, כפי ששנינו בברייתא:

> ערב תשעה באב לא יאכל אדם שני תבשילין לא יאכל בשר ולא ישתה יין דברי רבי מאיר וחכמים אומרים ישנה בבשר וביין ימעט כיצד ממעט אם היה רגיל לאכול לטרא בשר אוכל חצי לטרא היה רגיל לשתות לוג יין שותה חצי לוג ואם אינו רגיל כל עיקר אסור רבן שמעון בן גמליאל אומר אם היה רגיל לאכול אחר סעודתו צנון או מליח הרשות בידו.[79]

בברייתא אחרת שנינו:

> ערב תשעה באב לא יאכל אדם שני תבשילין לא יאכל בשר ולא ישתה יין רבן שמעון בן גמליאל אומר ישנה אמר רבי יהודה[80] כיצד משנה אם היה רגיל לאכול שני תבשילין אוכל אחד היה רגיל לשתות בעשרה כוסות שותה בחמשה במה דברים אמורים משש שעות ולמעלה אבל משש שעות ולמטה מותר.[81]

שתי הברייתות מציינות מחלוקת בין התנאים:

75 אולם ראה: תוס' שם, ד"ה „ותרוייהו" שמפרש שגם תספורת מותרת, נראה לנו שהוא פירש כך בעקבות דברי רבי יונה בסוגיא שבירושלמי תענית ד ט, סט ע"ב: ראה גם בתפארת ישראל ובתוספת רע"ק לפירוש המשנה שם: ראה גם: ד' שפרבר, מנהגי ישראל (שבעה כרכים: ירושלים: מוסד הרב קוק, תשנ"ד) ג:יד.

76 כמו ערב שבת, ערב פסח, ערב יום הכפורים ראה: משנה שבת ב ז, יט ד, כג א: סוכה ה ה: פסחים ה א: יומא א ג, ד ועוד.

77 ראה: משנה ברכות ג א: ירושלמי ברכות ג א, ו ע"א: בבלי ברכות יא ע"א-ע"ב: ירושלמי פסחים ח ח, ל"ו ע"א-ע"ב: בבלי זבחים צט ע"ב.

78 בבלי תענית ל ע"א-ל ע"ב.

79 בבלי תענית ל ע"א.

80 ובעדי נוסח אחרים הגירסא היא: „אמר רב יהודה" וגירסאות אחרות מוסיפות: „אמר רב" או „אמר שמואל" ראה: מלטער, תענית, 141: ראה גם: דקדוקי סופרים לשם, הערה נ והערה ס.

81 שם.

משנת רבי עקיבא בסתם.[67] לשיטתו, הרחבת איסור תספורת וכיבוס, הוא רק מראש חודש אב עד לאחר התענית. רבי מאיר, בהיותו תלמיד רבי עקיבא, הושפע מרבי חכמי לוד, ופעל שם רבות מראשית לימודיו ועד ערב המרד,[68] אך יחד עם זאת פעל בתחילת דרכו עם חכמי יבנה לשיקום החיים הדתיים לאחר החורבן, ואח"כ תמך במרד בר כוכבא.[69] לכן כפי הנראה, רבי מאיר מבטא כאן עמדת ביניים, המשקפת את המציאות המורכבת שבה היה נתון רבו רבי עקיבא ושאותה הוא ספג ממנו. מפשוטה של הברייתא משמע, שלדעת שלושת התנאים קיים איסור תספורת וכיבוס בכל השבוע שחל בו תשעה באב. לפי כולם האיסור הוא לפניו, אבל לאחריו רק רבי מאיר התיר. דעת הביניים של רבי מאיר כנראה רווחה, והיא נשנתה בסתם בתוספתא: „עבר תשעה באב מותר בכולן."[70] האיסור היה לא רק לכבס וללבוש אלא גם לכבס ולהניח כדברי הברייתא: „אסור לכבס לפני תשעה באב ואפילו להניח לאחר תשעה באב"[71] הלכה התנאית המאוחרת המשתקפת במשנה, הקלה בכיבוס לפני תשעה באב, כשתשעה באב חל בערב שבת:

> שבת שחל תשעה באב להיות בתוכה אסור מלספר ומלכבס ובחמישי מתרין[72] מפני כבוד השבת.[73]

ההלכה המאוחרת יותר הקלה לספר ולכבס בשבוע שלאחר תשעה באב מיד, כשיטת רבי מאיר, וגם בכיבוס בתשעה באב עצמו כשחל בערב שבת:

> שבת שחל תשעה באב להיות בתוכה אסורין לספר ולכבס כיצד חל להיות באחד בשבת מותר לכבס כל השבת כולה. בשני או בשלישי או ברביעי או בחמישי, לפניו אסור לאחריו מותר. חל להיות בערב שבת מותר לכבס בחמשי מפני כבוד השבת ואם לא כבס בחמשי מותר לכבס בערב שבת מן המנחה ולמעלה.[74]

ברייתא מאוחרת זו מקלה בכיבוס ביום חמישי כשתשעה באב יחול למחרת בערב שבת. מכאן

67 ראה: אפשטיין, מבואות, 74: אנקר, רבי יהודה, 31.

68 ראה: מרגליות, אנציקלופדיה, 728: ספראי, רבי עקיבא, 13: רוזנפלד, לוד, 45, 60.

69 ראה: ד' בן חיים טריפון, „הרקע הפוליטי הפנימי של מרד בר כוכבא," בתוך: א' אופנהיימר ואחרים, עורכים, מרד בר כוכבא מחקרים חדשים (ירושלים: יד יצחק בן צבי, תשמ"ד) 21-22: מ' מור, מרד בר כוכבא עוצמתו והיקפו (ירושלים: יד יצחק בן צבי, החברה לחקירת ארץ ישראל ועתיקותיה, תשנ"ב) 218-223: אדרת, מחורבן לתקומה, 25-26: רוזנפלד, לוד, 21-23 ועל תמיכתו במרד בר כוכבא ראה הפנייה למקורות: שם, 21 הערה 62: א' אופנהיימר, „מרד בר כוכבא," בתוך: ברס, ארץ ישראל א:53-59: הנ"ל, הגליל, 36: ד' הרמן, „על המגמות ביחסם של התנאים לגזל הנכרי," שנתון המשפט העברי טז (תשנ"א-תשנ"ב) רמא-רמח.

70 תוספתא תענית ג יב (מהדורת ליברמן, 341). ראה עוד ד' הרמן, „התקלגות הנטיות ההלכתיות של התנאים והאמוראים לפי אסכולות והשתקפותן בהלכוי תשעה באב בימי המשנה והתלמוד" (עתיד להתפרסם).

71 בבלי תענית כט ע"ב, ושם בהמשך הברייתא: „וגהוץ שלנו ככבוס שלהן..." נראה שזו תוספת מאוחרת שנשנית בבבל. ראה מ' היגער, אוצר הבריתות (עשרה כרכים: נוי יורק: דבי רבנן, תרצ"ח-תש"ח) ו:304: ובגרסת הר"ח: „וגיהוץ של בני בבל ככבוס של בני א"י."

72 „אם חל תשעה באב בערב שבת מותרין לכבס בחמישי..." (רש"י שם, ד"ה „בחמישי מותרין" בבלי תענית כו ע"ב).

73 משנה תענית ד ז.

74 בבלי תענית כט ע"ב.

נראה לנו שבלוד התרכזו חכמים שהיו מעונינים בהחזרת העטרה ליושנה. אותם חכמים חיכו וציפו ליום, שבו ההגמוניה והשלטון שוב יהיו בידי הכהנים, בניגוד למצב שהיה לאחר חורבן הבית, לאחר שבוטלה הכהונה הגדולה עקב החורבן. חכמים אלו שאפו לכך שהשלטון יהיה בידי הנהגה דתית של משפחות מיוחסות מקרב הכהנים והלוים ולא בידי נשיאים מבית הלל.[61]

חשוב גם לציין שלחכמי לוד היה מעמד בכיר בימים שלאחר מותו של רבן גמליאל עד פרוץ מרד בר כוכבא. אז היתה להנהגת האומה צביון של הנהגה קולקטיבית בראשותם של גדולי חכמי התקופה שחיו בלוד, כפי שכתב ב״צ רוזנפלד:

> אמנם כל התקופה שמהחורבן ועד מרד בר כוכבא נתפסת במסורת היהודית כתקופת יבנה: „גלתה סנהדרין [...] מירושלים ליבנה ומיבנה לאושא״ (בבלי ראש השנה לא ע״ב). ואולם דומה שעם פטירת הנשיא ירדה גם חשיבותה של יבנה, ואת מקומה תפסה לוד – שקודם לכן היתה שניה ליבנה בחשיבותה – והיתה מרכז הנהגת החכמים עד לפרוץ מרד בר כוכבא.[62]

בין החכמים שלמדו בלוד היה גם רבי יהודה בר אילעאי, שהיה אח״כ מגדולי חכמי אושא, שהושפע מתורתם של חכמי לוד. הוא הרבה לעסוק בהלכות הקשורות למקדש, ובידו היו מסורות רבות יותר מחכמים אחרים בני דורו על בית המקדש,[63] לכן, הוא נקט כאן, בגישה מחמירה בדיני תשעה באב, המציינים את זכר חורבן המקדש. הדעה הקיצונית המקלה היא של רבן שמעון בן גמליאל הסבור שהרחבת איסור תספורת וכיבוס הוא רק לשבוע שחל בו תשעה באב. עמדה מתונה זו, כמו גם בהלכותיו האחרות בדיני תשעה באב, יש לראותה על רקע מינויו לנשיא הסנהדרין, באישור השלטון הרומי,[64] ושיקום הנהגת החכמים בגליל לאחר מרד בר כוכבא, בעוד שבלוד לא היו כבר חכמים בעלי שיעור קומה ארצי.[65] שיטת הביניים היא של רבי מאיר, מתלמידיו המובהקים של רבי עקיבא,[66] ששנה את

קוק, תשכ״ו) 20–29 (להלן, ביכלר, הכהנים): ר׳ קימלמן, „האוליגרכיה הכהנית ותלמידי החכמים בתקופת התלמוד (ירושלמי, שבת יב ג, יג ע״ג = הוריות-ג, -מח ע״ג)״ ציון (תשמ״ג) 135–148: א׳ אנקר, רבי יהודה בר אילעאי האיש ותקופתו (דיסרטציה, אוניברסיטת בר אילן: רמת גן תשמ״ז) 1, 13, 15, 31–34, 39–40, 64 (להלן, אנקר, רבי יהודה): א׳ אופנהיימר, הגליל בתקופת המשנה (ירושלים: מרכז זלמן שז״ר לתולדות ישראל, תשנ״א) 119 (להלן, אופנהיימר, הגליל): י׳ שוורץ, היישוב היהודי ביהודה (ירושלים: הוצאת ספרים ע״ש מאגנס, תשמ״ו) 36–44 (להלן, שוורץ, היישוב): ב״צ רוזנפלד, לוד וחכמיה בימי המשנה והתלמוד (ירושלים: יד בן צבי, תשנ״ז) 44 (להלן, רוזנפלד, לוד): אדרת, מחורבן לתקומה, 59.

61 שם, 167: חשוב לציין שגם רבן גמליאל גר בלוד עד שהתמנה לנשיא בשנת 85 לספירה ואז עבר ליבנה ראה: ב״צ רוזנפלד, „מעמדו ופועלו של רבן גמליאל לפני הליכתו ליבנה,״ ציון נה (תש״ן) 151–169: ש׳ ספראי, „התאוששות,״ 30–32

62 רוזנפלד, לוד, 18–19.

63 שם, 40.

64 אלון, תולדות, א:293–294: תולדות, ב:69–75: ח״ד מנטל, מחקרים בתולדות הסנהדרין (תל אביב: דביר, תשכ״ט) 194–195.

65 ראה רוזנפלד, לוד, 72, לוד השתקמה רק מאוחר יותר בשנות החמישים (שם, 75): על פועלו של רשב״ג ראה מקורות נוספים שם, 75 הערה 21: אופנהיימר, הגליל, 49, 51: אדרת, מחורבן לתקומה, 256.

66 ראה: היימאן, תולדות, ג:866: מרגליות, אנציקלופדיה, 621–622: אפשטיין, מבואות, 74, 96: אופנהיימר, הגליל, 45.

> שבת שחל תשעה באב בתוכה אסור לספר ולכבס ואסור ליארס ויש אומרים כל החדש אסור.[56]

במשנה נאמר:

> שבת שחל תשעה באב להיות בתוכה אסור מלספר ומלכבס.[57]

המשותף לשני המקורות הללו הוא, שאיסור תספורת וכיבוס המתחיל בשבוע שחל בו תשעה באב, אולם קיים הבדל ביניהם לגבי אירוסין. רבי יהודה הנשיא גם כאן הקל ולא אסר ליארס, כפי שנראה בהמשך, הוא נשען בכך על שיטת רבי מאיר, וכן על העובדה שהדיון בין חכמי אושא התקיים רק לגבי תספורת וכיבוס ולא על אירוסין, כדברי הברייתא:

> ואסור לספר ולכבס מראש חדש ועד התענית דברי רבי מאיר רבי יהודה אומר החדש כלו אסור רבן שמעון בן גמליאל אומר אין אסור אלא אותה שבת בלבד ותניא אידך ונוהג אבל מראש חדש ועד תענית דברי רבי מאיר רבי יהודה אומר כל החדש כלו אסור רבן שמעון בן גמליאל אומר אין אסור אלא אותה שבת בלבד.[58]

ה„תניא אידך" מבהירה את מעמדו החמור של השבוע שחל בו תשעה באב, שנוהגים בו את מנהגי אבלות. אולם הנוסח בברייתא הראשונה, מצמצם את דיני האבל, אך ורק לתספורת וכיבוס. הדעות הן של חכמי אושא, שלמדו בדור יבנה אצל החכמים שחיו בלוד ושהושפעו מהם. רבי יהודה בר אילעאי, הוא המחמיר מכולם, והסבור שכל החודש כולו אסור. עמדתו המחמירה, כנראה נובעת, מהיותו תלמיד מובהק של חכמי לוד: אביו רבי אילעאי, רבי אליעזר, ורבי טרפון, שהמשיכו את תורתם של בית שמאי. לאחר החורבן, חכמים מבית שמאי התיישבו בלוד, ושם הקימו בית מדרש. הם לא קיבלו תמיד את ההכרעה שהושגה ביבנה, שהייתה כבית הלל, ולא הכירו בסמכותם של חכמי יבנה, לקבוע את ההלכה, והמשיכו לנהוג בלוד ובסביבתה כבית שמאי. בלוד, ישבו גם משפחות כהנים, לויים, ומשפחות עשירות, שסרבו להכיר בהגמוניה, של בית הנשיא והסנהדרין. משפחות אלה, היו צאצאי משפחות מיוחסות, שישבו בירושלים בזמן שביהמ"ק היה קיים. לאחר החורבן, עברו משפחות אלה ללוד ולציפורי.[59] למשפחות אלה, היה קשה להכיר, שחורבן בית המקדש הוא עובדה מוגמרת.[60] א' אנקר, מציין:

לחלופי המנהגים הקשורים לתשעה באב בתקופת האמוראים בארץ ישראל' (שני המאמרים עתידים להתפרסם אי"ה באסופות).

56 בבלי יבמות מג ע"ב.

57 משנה תענית ד ז.

58 בבלי תַענית כט ע"ב.

59 על המועד שבו עברו הכהנים לגליל ראה: ט' כהנא, „הכוהנים למשמרותיהם ולמקומות התיישבותם," תרביץ מח (תשל"ט) 9-29: ז' ספראי, פרקי גליל בתקופת המשנה והתלמוד (מעלות: קרית חינוך – המדרשה ליהדות ע"ש אביעד יפה, תשמ"ה) 196-205: ד' טריפון, „האם עברו משמרות הכהנים מיהודה לגליל אחרי מרד בר כוכבא," תרביץ נט (תש"ן) 77–94: ז' ספראי, „מתי עברו הכוהנים לגליל? תגובה למאמרה של דליה טריפון," תרביץ סב (תשנ"ג) 287–292.

60 ראה: א' היימאן, תולדות תנאים ואמוראים (לונדון, תר"ע [ד"צ: ירושלים: הוצאת „קריה נאמנה," תשכ"ד]) ב:534–542 (להלן, היימאן, תולדות): מ' מרגליות, אנציקלופדיה לחכמי התלמוד והגאונים (ת"א ירושלים: הוצאת י' צ'ציק, ללא ציון שנת ההוצאה) 395–396 (להלן, מרגליות, אנציקלופדיה): י"נ אפשטיין, מבואות, 106, 746: E. M. Smallwood, "High Priests and Politics in Roman Palestine," *JTS* 24(1962) 11–34: א' ביכלר, הכהנים ועבודתם במקדש ירושלים בעשור השנים האחרון שלפני חורבן בית שני (ירושלים: מוסד הרב

> דתניא מראש חדש ועד תענית העם ממעטין מעסקיהן מלישא ומליתן מלבנות ולנטוע ומליארס ומלישא.[52]

בברייתא אחרת שנינו:

> ותניא קודם הזמן הזה ממעטין בעסקיהם מלישא ומליתן מלבנות ולנטוע ומארסין אבל לא כונסין ואין עושין סעודת ארוסין.[53]

הברייתא פותחת: „קודם הזמן הזה" פתיחה בלשון זו מלמדת שלפנינו קטע התייחס לחלק שלפניו, שלא נמצא בידינו. לכן קיימת אי בהירות באשר לזמן שאליו מתייחסת הברייתא. אם הקטע החסר עסק בתשעה באב, אזי הקטע ששרד בידינו הפותח: „קודם הזמן הזה," הכוונה לשבוע שחל בו תשעה באב. אם הקטע החסר התייחס לשבוע שקודם תשעה באב, אזי „קודם הזמן הזה," הכוונה היא לימים שמר"ח אב עד לשבוע שחל בו תשעה באב.[54]

אם ההלכות שבברייתא זו מתייחסות לשבוע שחל בו תשעה באב, אזי היא מקלה יותר מהברייתא השניה, שקבעה, שיש למעט בעניינים שהוזכרו שם, כבר החל מראש חודש אב. אך אם ההלכות שבברייתא מתייחסות לשבוע שחל בו תשעה באב, אזי שתי הברייתות עוסקות בשבוע שחל בו תשעה באב, והן חולקות ביניהן בעניין אירוסין. אך אין לדעת האם הברייתות הללו שתיהן קדומות, או שהברייתא האוסרת ליארס, מכיון שהיא מחמירה, היא קדומה יותר, והברייתא השניה המתירה ליארס היא מאוחרת יותר. רבי יהודה הנשיא קבע במשנה:

> משנכנס אב ממעטין בשמחה שבת שחל תשעה באב להיות בתוכה אסור מלספר ומלכבס.[55]

בקביעה זו ניתן לראות מגמה של קולא, שיש למעט רק בענייני שמחה, כמפורט בברייתא לגבי תענית ציבור, ולא בכל מכלול העניינים שהוזכרו בברייתא: בעסקים, מלישא ומליתן, אירוסין ונישואין. מגמה זו של קולא בדיני תשעה באב, מאפיינת את שלהי דורות התנאים, ובמיוחד את רבי יהודה הנשיא, כפי שנראה בהמשך.

שלב ב: שבוע שחל בו תשעה באב

החל מראש חדש אב מחמירים את דפוסי זיכרון החורבן בהוספת מקצת מדיני אבלות של תספורת וכיבוס, על דיני תענית ציבור שהורחבו כבר החל מראש חדש אב. בברייתא נאמר:

52 בבלי יבמות מג ע"ב.

53 בבלי יבמות מג ע"א.

54 שתי האפשרויות הללו הוצעו ע"י הסוגיא התלמודית שם.

55 משנה תענית ד ט עפ"י כת"י קויפמן, ראה: משנה כת"י קויפמן (שני כרכים: ירושלים, הוצאת מקור, תשכ"ח) א:258: כן במשנה כת"י נוסח תימן עם פירוש הרמב"ם בערבית ראה: י"ל נחום, סדר מועד של משנה כתב יד בנוסח תימן עם פירוש הרמב"ם בערבית (חולון: מפעל חשיפת גנזי תימן בישראל, תשל"ו) 305: וכן בכת"י קמבריג', ראה: משנה כת"י קמבריג' (שני כרכים: ירושלים: ספרית מקורות, תשכ"ז) א:64, וכן במשנה בירושלמי תענית ג ח, סז ע"ב, אולם בכת"י פאריס זוהי משנה ו הפותחת: „חמשה דברים..." ראה: משנה כת"י פאריס 328–329 (ארבעה כרכים: ירושלים, הוצאת מקור, תשל"ג) א:307, ואצל ח' אלבק פיסקא זו מחוברת עם משנה ו, ומשנה ז פותחת: „שבת שחל תשעה באב" וכו'. ראה: משנה (מהדורת אלבק, ירושלים: מוסד ביאליק, דביר, תשי"ב-תשי"ט). ראה עוד ד' הרמן, „התמורות במעמדו של יום תשעה באב בשלהי תקופת התנאים ובדורות הראשונים של האמוראים בארץ ישראל": ד' הרמן, „,,דרומאי נהגין חגא צפוראיי נהגין חדשה טיבראי נהגין שבתא חזרין רבנן דטיבריא למנהוג כרבנן דציפורין' – הרקע

לפי נוסח זה לא מוזכר איסור מלאכה הנהוג באבל. אולם איסור מלאכה מופיע בכת״י אוכספורד 366,[46] לנו נראה שזה אכן הנוסח הקדום והמדויק של הברייתא, לפיו קיים עקרון של החלת כל דיני האבל האישי על תשעה באב, ורק ההלכה התנאית המאוחרת שהקלה בדיני תשעה באב, מציינת:

> מקום שנהגו לעשות מלאכה בתשעה באב עושין מקום שנהגו שלא לעשות מלאכה אין עושין....[47]

לכן, לא נראים דבריו של מלטער שכתב:

> וגרסת במלאכה של א (כת״י אוכספורד-ד.ה.[48]) היא בודאי מוטעת דנוהגות סתם קתני ות״ב מותר בעשיית מלאכה במקום שנהגו.[49]

לדעתנו, מלטער לא דייק, ולא הבחין בהתפתחות ההלכתית של איסור מלאכה, שההלכה הקדומה שאסרה מלאכה בתשעה באב כמו כל דיני האבל האחרים, נשמרה במתכונתה בברייתא שבכת״י אוכספורד, ורק בעקבות ההלכה המאוחרת שהקלה בדיני תשעה באב , הדבר השפיע על כת״י האחרים ומחקו מהם את איסור מלאכה. אנו סבורים שהברייתא הסתמית השונה הלכה חמורה של החלת דיני אבלות על תשעה באב, היא הלכה קדומה, חכמי אושא, תלמידיהם של חכמי יבנה, הרחיבו מקצת מדיני אבלות גם על הימים שלפני תשעה באב. הרחבה זו הייתה גם על דיני תענית ציבור הפותחים את דפוסי זיכרון החורבן ההדרגתיים של תשעה באב.

שלב א: החל מראש חדש אב

ההלכה התנאית הקדומה הרחיבה את מקצת דיני תענית ציבור על הימים שמראש חודש אב, ובכך פותחים את דפוסי זיכרון החורבן שחל בתשעה באב. ההלכה התנאית קבעה שאם עברו שבע תעניות אחרונות שהתענו על הגשמים ולא נענו:

> ממעטין במשא ומתן בבנין ובנטיעה בארוסין ובנשואין ובשאלת שלום בין אדם לחברו.[50]

הברייתא שם מפרשת:

> תנא בנין בנין של שמחה נטיעה נטיעה של שמחה אי זהו בנין של שמחה זה הבונה בית חתנות לבנו ואיזו היא נטיעה של שמחה זה הנוטע אבורנקי של מלכים.[51]

חלק מהלכות אלה החילו גם על תשעה באב, כפי שעולה משתי ברייתות. בברייתא אחת שנינו:

46 ראה: מלטער, תענית, 142 בהערות.
47 משנה פסחים דה.
48 ראה: מלטער, תענית, ח, יט.
49 שם, 142 הערות לשורה 12.
50 משנה תענית א ז.
51 בבלי תענית יד ע״ב.

לפניהן דברי כבושין... עמדו בתפלה מורידין לפני התבה זקן ורגיל... ואומר לפניהם עשרים וארבע ברכות שמונה עשרה שבכל יום ומוסיף עליהן עוד שש...[38]

בשאר התעניות שהוזכרו לעיל, לא נהגו באופן מדורג כמו בירידת גשמים, אלא „מתריעין עליהם מיד."[39] המשנה מציינת שבתעניות ציבור התפללו מספר שונה של תפילות מיום חול, הכהנים נשאו את כפיהם,[40] וקראו בתורה „ברכות וקללות."[41]

כאמור לעיל, אין בידינו עדות המציינת את המועד שבו צויין לראשונה יום תשעה באב, כיום תענית ציבור. מאידך קיימת בידינו עדות מחכמי אושא על קיומם של דיני אבלות בתשעה באב, כדברי הברייתא:

ונוהג אבל מראש חדש ועד תענית דברי רבי מאיר רבי יהודה אומר כל החדש כלו אסור רבן שמעון בן גמליאל אומר אין אסור אלא אותה שבת בלבד.[42]

בנוסח אחר של הברייתא קיים פרוט לאותם דיני אבלות:

ואסור לספר ולכבס מראש חדש ועד התענית דברי רבי מאיר רבי יהודה אומר כל החדש כלו אסור רבן שמעון בן גמליאל אומר אין אסור אלא אותה שבת בלבד.[43]

איסור תספורת וכיבוס הם חלק מדיני אבלות, כדברי הברייתא:

ואלו דברים שאבל אסור בהן אסור במלאכה וברחיצה ובסיכה ובתשמיש המטה ובנעילת הסנדל ואסור לקרות בתורה ובנביאים ובכתובים ולשנות במשנה במדרש ובהלכות ובתלמוד ובאגדות.[44]

מכאן, שהעיקרון של החלת דיני אבלות על תשעה באב, בנוסף להיותו יום תענית ציבור, קדם לדור אושא, וחכמי אושא רק נחלקו ביניהם באשר להרחבת מקצת מדיני אבלות של תספורת וכיבוס, מעבר לתשעה באב עצמו. החלת דיני אבלות על תשעה באב מופיעה בברייתא:

תנו רבנן כל מצות הנוהגות באבל נוהגות בתשעה באב אסור ברחיצה ובסיכה ובנעילת הסנדל ובתשמיש המטה ואסור לקרות בתורה ובנביאים ובכתובים ולשנות במשנה במדרש ובתלמוד ובהלכות ובאגדות...[45]

38 משנה תענית א ה-ז; ב א-ד; תבורי, מועדי ישראל, 395-396.
39 משנה תענית ג א-ח; מהספרות התנאית לא ברור אם רק מתענים ומתריעים או שנהגו גם בכל הסדר שצוין לעיל שמוציאין את התיבה לרחובה של עיר ומתפללים עשרים וארבע ברכות. בעניין זה דנו הראשונים, ראה: בית יוסף, אורח חיים, סימן קעט; ראה עוד: לוין, תעניות, 47-50.
40 משנה תענית ד א.
41 משנה מגילה ג ו.
42 בבלי תענית כט ע"ב.
43 שם.
44 בבלי מועד קטן כא ע"א; מסכת שמחות ו א (נוי יורק: מהדורת היגער, תרצ"א) 130; אולם בברייתא בירושלמי מועד קטן ג ה, פב ע"ד וברכות ב ז, ה ע"ד הנוסח הוא: „אלו דברים שאבל אסור בהן כל שבעה": ראה: ל' גינצבורג, פירושים וחידושים בירושלמי (שלושה כרכים; נוי יורק: בית מדרש לרבנים אשר באמעריקא, תש"א-תשכ"א) א: 375-380 (להלן, גינצבורג, פירושים).
45 בבלי תענית ל ע"א.

שיערנו שרבי יהודה הנשיא כמו גם הנשיאים האחרים הם חששו, שמתן ביטוי עמוק לאבלות, עלול לעורר תסיסה משיחית ושאיפה לחירות מדינית, דבר שיערער את היחסים עם השלטונות ויחבל בפעולות השיקום. לכן, הם פעלו למתן את דפוסי האבלות של תשעה באב.[29] כאמור, דפוסי האבל הראשוניים של תשעה באב הועתקו מדיני ומנהגי תעניות ציבור שרווחו בעם עוד מימי הנביאים.[30] מהתיאורים שבספרי הנביאים רואים שהצום שהוכרז, נועד לעורר את רחמי הקב"ה בעת צרה גדולה כצומם של אנשי נינוה (יונה ג), וכשישראל ניגפו לפני בנימין (שופטים כ, כו-כח), ועוד.[31] צומות ציבוריים הוכרזו גם בימי בית שני,[32] והספרות התנאית מציינת, שהסיבות להכרזת התענית היו עקב עצירת גשמים,[33] מגיפות,[34] מפולת,[35] צרה פתאומית שהתרגשה: ,עיר שהקיפוה גוים או נהר ועל ספינה המטרפת בים;[36] ועל צרה ההולכת ומתפשטת ממקום למקום כגון שדפון וארבה.[37] התעניות השכיחות היו עקב עצירת גשמים, שהתחלקו לשלושה שלבים, המתוארים במשנה:

> הגיע ראש חדש כסלו ולא ירדו גשמים בית דין גוזרין שלש תעניות על הצבור אוכלין ושותין משחשכה ומתרין במלאכה וברחיצה ובסיכה ובנעילת הסנדל ובתשמיש המטה עברו אלו ולא נענו בית דין גוזרין שלש תעניות אחרות על הצבור אוכלין ושותין מבעוד יום ואסורין במלאכה וברחיצה ובסיכה ובנעילת הסנדל ובתשמיש המטה ונועלין את המרחצאות עברו אלו ולא נענו בית דין גוזרין עליהם עוד שבע שהן שלש עשרה תעניות על הצבור הרי אלו יתרות על הראשונות שבאלו מתריעין ונועלין את החנויות בשני מטין עם חשכה ובחמישי מתרין מפני כבוד השבת עברו אלו ולא נענו ממעטין במשא ומתן בבנין ובנטיעה בארוסין ובנשואין ובשאלת שלום בין אדם לחברו... סדר תעניות כיצד מוציאין את התבה לרחובה של עיר ונותנין אפר מקלה על גבי התבה ובראש הנשיא ובראש אב בית דין וכל אחד ואחד נותן בראשו הזקן שבהן אומר

29 ראה עוד ד' הרמן, „השפעת השיקול המדיני על יחסו של רבי יהודה הנשיא למועדי בית שני – ביטויו במשנתו ההלכתית והשתקפותו בספרות התנאית" (עתיד להתפרסם): ד' הרמן, „לתולדות גיבושן והשתשלותן של הלכות נר חנוכה בימי הבית ובתקופת המשנה והתלמוד" (עתיד להתפרסם אי"ה באסופות): ד' הרמן, „השפעת הנשיאים על עיצוב דפוסי האבלות לתשעה באב," אסופות ח(תשנ"ד) קלז-קמד.

30 ראה: אנציקלופדיה מקראית (תשעה כרכים: ירושלים: מוסד ביאליק, תש"י-תשמ"ח) ו, טורים 692-695: Theologisches Worterbuch zum Alten Testament (zehn Bande: Stuttgart/Berlin/Koln: Verlag W. Kohlhammer, 1973–95) 6:959–63: H. A. Brongers, "Fasting in Israel in Biblical and Post Biblical Times," *OS* 20 (1977) 1–21: לוין, תעניות, 185-188: ש' ספראי, בשלהי הבית השני, ובתקופת המשנה (ירושלים: משרד החינוך והתרבות/מרכז זלמן שז"ר, תשמ"א) 120-121.

31 ראה שמואל א ז, ג-ו: ירמיהו יד: יואל ב, טו-טז: דברי הימים ב ב, כ.

32 ראה נ' חכם, תעניות ציבור בתקופת הבית השני (דיסרטציה, האוניברסיטה העברית: ירושלים, תשנ"ו): לוין, תעניות, 36-96, 188-194.

33 משנה תענית ג א-ג: תוספתא תענית ב ח (מהדורת ליברמן, 332): ירושלמי תענית ג א-ב, סו ע"ב-ע"ג: בבלי תענית יט ע"ב: תבורי, מועדי ישראל, 391-396.

34 משנה תענית ג ד: תוספתא תענית ב ט (מהדורת ליברמן, 332): ירושלמי תענית ג ה, סו ע"ד: בבלי תענית יט ע"ב, כא ע"א.

35 משנה תענית ג ד: ירושלמי תענית ג ה, סו ע"ד: בבלי תענית כ ע"ב.

36 משנה תענית ג ז.

37 משנה תענית ג ה: תוספתא תענית ב י (מהדורת ליברמן, 333): ירושלמי תענית ג ו-ז, סו ע"ג: בבלי תענית יט ע"ב, כב ע"א-ע"ב.

נקבע, לא הודרך, ולא עוצב ע״י חכמי יבנה לפחות לא באופן פומבי, ואולי אף נוצר באופן ספונטני ע״י העם, בתאריך שבו גם חרב הבית הראשון, מהטעם הנזכר לעיל. על רקע זה ניתן להבין את האמירה הקשה והחריפה ש: „האוכל והשותה בתשעה באב כאלו אכל ושתה ביום כפורים.״ לפי כת״י אין להכריע אם אמירה זו מיוחסת לרבן גמליאל דיבנה או לרבי שמעון בן גמליאל. גם אם נניח שאמירה זו מיוחסת לרבן גמליאל, יש בכך מעין הצהרה פומבית מהנשיא כמייצג את חכמי הדור, על חשיבותו של יום תשעה באב, שדפוסיו המעשיים התגבשו בעם, אך מעבר להצהרת חשיבות זו, שהיא הכרחית לדור שהיה עד לחורבן, למשבר הרוחני הגדול שבא אחריו, חכמי יבנה לא טיפחו ועיצבו את דפוסיו ההלכתיים של היום, ואין מהם הלכות ליום זה, בשונה מפועלם בפיתוח הלכות ותקנות בנושאים שונים, שנועדו להציג משמעות לקיום המצוות גם בעידן שאין בו מקדש.

השילוב שנוצר בין תענית ציבור לאבלות, משלים זה את זה. מכלול ההגבלות שבתענית ציבור נועדו למנוע עונג, בעוד שמכלול ההגבלות שבדיני אבלות נועדו לא רק למנוע עונג, אלא גם להגדיל אצל האבל את תחושת הצער, הבדידות והשיממון, מצב לימינאלי של „אי היראות״ (invisibility).[24] דיני תשעה באב הם שילוב ייחודי בין דיני תענית ציבור לדיני אבלות, כשמימד האבלות הוא הבולט בו.[25]

בספרות התנאית, הכניסה לתשעה באב היא כניסה הדרגתית, שלב אחר שלב: החל מראש חודש אב, שבוע שחל בו תשעה באב, ערב תשעה באב, יום תשעה באב. ההלכות הקדומות ביותר המתייחסות לתשעה באב, מימי הבית או מדור יבנה, ניתן לזהות ע״י שני סימנים מצטברים. האחד, באנונימיותן, שאין מאחוריהן שם, אלא הלכות שנשנו בסתם. והשני, באופיין המחמיר בהשוואה להלכות משלהי תקופת המשנה ותקופת התלמוד, שהן מקלות יותר. מגמת ההקלה בדיני תשעה באב בולטת באופן מיוחד אצל רבי יהודה הנשיא, כמסופר בירושלמי:

> רבי בא בר זבדא בשם רבי חנינה ביקש רבי לעקר תשעה באב ולא הודו לו אמר לו רבי אלעזר עמך הייתי ולא איתאמרת אלא ביקש רבי לעקור תשעה באב שחל להיות בשבת ולא הניחו לו אמר הואיל ונדחה ידחה אמרו לו יידחה למחר.[26]

לפי רב בא בר זבדא בשם רבי חנינא, רבי יהודה הנשיא ביקש לעקור את תשעה באב. אולם לפי רבי אלעזר, הוא ביקש לעקור את תשעה באב שחל בשבת, ולא לציינו ביום ראשון, הואיל ונדחה משבת ידחה בכלל. גם אם נקבל את דברי רבי אלעזר, עדיין מעשהו של רבי עומד בניגוד למשנה עתיקה הקובעת:

> אבל זמן עצי כהנים ותשעה באב וחגיגה והקהל מאחרין ולא מקדימין.[27]

לפי משנה זו יש לאחר ולא לעקור. כך או כך סבורים ג׳ אלון, א׳ אורבך ובעקבותיהם י׳ תבורי שרבי יהודה הנשיא ביקש לבטל את הצום כליל, על רקע תקוות משיחיות ראליות.[28] אנו

24 נ׳ רובין, קץ החיים טקסי קבורה ואבל במקורות חז״ל (תל אביב: הוצאת הקיבוץ המאוחד, תשמ״ז) 49 (להלן, רובין, קץ החיים): ראה: ד׳ לוין, תעניות הציבור ודרשות החכמים הלכה ומעשה בתקופת התלמוד (תל אביב: הוצאת הקיבוץ המאוחד, תשס״א) 57–58 (להלן, לוין, תעניות).

25 כך ראו את תשעה באב גם האמוראים ראה בבלי תענית יג ע״א.

26 ירושלמי מגילה א ו, ע ע״ג: ירושלמי תענית ד ט, סט ע״ג: ירושלמי יבמות ו ו, ז ע״ד.

27 משנה מגילה א ג: השווה למשנה תענית ד ה „זמן עצי הכהנים והעם בתשעה״: ראה: תבורי, מועדי ישראל, 399–400.

28 שם, 403 ובהערה 53: ראה גם: ע׳ מאיר, רבי יהודה הנשיא דיוקנו של מנהיג במסורות ארץ ישראל ובבל (תל אביב: הוצאת הקיבוץ המאוחד, תשנ״ט) 233–234.

העם לקיים את מצוות התורה ללא מקדש תוך התאמת ההלכה למציאות של היעדר מקדש, כפי שמציין א׳ אדרת:

> מקובל לומר, כי תקנות יבנה באו למלא את החלל הריק שנוצר עם חורבן בית המקדש. אולם העיון בתקנות אלה מעלה, שיש בהן כוונה מרחיקת לכת, הצופה עתידות שהיא עיקרן. אפשר להבחין בתקנות יבנה שתי מערכות משולבות, המכוונות לבניין חיי האומה ועיצוב דרכי ההלכה, ללא תלות במקדש ובעבודת הקודש הנוהגת בו: במערכה הראשונה כלולות תקנות המכוונות להעתקת קיומן של מצוות ומנהגים, שיוחדו לפנים למקדש, ליבנה ולעבודת הקודש בבית הכנסת בכל אתר ואתר... המקורות התנאיים נוהגים להסביר טיבן של תקנות אלו כמכוונות לשמש ,זכר למקדש׳ אולם העיון בתקנות אלו מעלה, שיותר משיש במעתק הזה של מצוות שנהגו במקדש ליבנה משום התרפקות על זכרונות טקסי בית המקדש, יותר מכך יש בו כוונה לשוות תוקף למצוה זו בהיותה מקויימת ביבנה, ללא חובת זיקה למקדש ולעבודת הקודש שנהגה בו. ולפי זה, יש לראות בתקנות אלו כמכוונות להציג אפשרות של משיכת מצוות שנהגו במקדש, כחלק מעבודת הקודש, למציאות של העידר מקדש: וכסמל לרציפות אורחות החיים היהודיים על אף החורבן. מגמה זו ניכרת ביותר במערכת התקנות השנייה. התקנות המערכת השנייה כוללות כמה הכרעות שנקבעו ביבנה בתחומים שונים של הלכה, ומעבר לה לסלילת דרכים חדשות בהלכה ובאורחות החיים, שיהא בהן כדי להוות מסגרת יציבה של חיים יהודיים, לפרט ולציבור, במציאות של היעדר בית מקדש....[22]

מכיוון שחכמי יבנה ראו את עיקר פועלם בשיקום עתידו של העם ממשבר החורבן, הם כנראה חששו שאם הם יזמו ויקבעו דפוסי אבל ייחודיים ליום זה, הדבר עלול להפריע למאמצי שיקום האומה, כי העם יתרפק על זכרונות העבר המפואר שיעלו כל שנה ביום זה, והדבר יקשה על ההסתגלות מחדש, שכה נחוצה להמשך חיי האומה ללא בית מקדש.

השאלה המרכזית היא, מתי התגבש אופיו של יום תשעה באב, ואיזה אופי הוא נשא? אין בידינו עדויות מתי התגבש אופיו של יום תשעה באב, הדבר תלוי בשאלה אם התענו בימי בית שני על חורבן בית ראשון? אם אכן התענו, אזי תענית תשעה באב התגבשה בימי בית שני, ואם לא התענו, אזי היא התגבשה לאחר חורבן בית שני, בתאריך תשעה באב דווקא, כי ביום זה חרב גם בית ראשון, ואין להעת אם כבר אז הייתה מסורת בידם גם על מאורעות נוספים שהתרחשו ביום זה, או שמאורעות אלה רק צורפו אח״כ ליום זה, מתוך העקרון שבברייתא שמגלגלין חובה ליום חייב.[23] באשר לשאלה מה היה אופיו? זאת ניתן ללמוד מההלכות שדנים בהם חכמי אושא כהלכות הרווחות זה מכבר, המתאפיינות בשילוב של דיני תענית ציבור עם הדינים הנהוגים באבל, כפי שנתאר להלן. דבר זה מלמד, שבידם של חכמי אושא, קיימת מסורת הלכתית מדור יבנה, או אולי עוד מימי הבית, שיום תשעה באב, מתאפיין בשילוב בין דיני תענית ציבור לדיני אבלות, וזאת כדי לשוות לחורבן ממד של אבל אישי ולא רק ציבורי. כאמור, אופי משולב זה של היום, ספק אם התגבש כבר בימי הבית או רק לאחר החורבן. אולם גם אם אופי היום התגבש לאחר החורבן, יש מקום להניח שהדבר לא

22 ראה: א׳ אדרת, מחורבן לתקומה דרך יבנה בשיקום האומה (ירושלים: הוצאת ספרים ע״ש י״ל מאגנס, תשנ״ח) 18 (להלן, אדרת, מחורבן לתקומה): ש׳ ספראי, „התאוששות היישוב היהודי בדור יבנה,״ בתוך: ברס, ארץ ישראל, א:18–39 (להלן, ספראי, „התאוששות״).

23 בבלי תענית כט ע״א.

בקטע כת"י מביהמ"ד לרבנים שבניו יורק (המסומן נ): [תניא] רשב"ג או'...
ר"ע אומר

בקטע כת"י קמבריג' Add. 1009 (המסומן פ): רבן [שמעון בן] גמליאל אומר...
ור"ע אומר

בהוצאת הדפוס (המסומן ד): תניא רשב"ג אומר...ר"ע אומר

מחמת ריבוי הגירסאות כאן, מלטער כתב:

ויש לפקפק הרבה בסדר התנאים והמימרות שבברייתא זו... מכל זה יראה הרואה שאי אפשר לברר כאן את הנוסח העקרי בהחלט.[15]

כך שאין לדעת אם הדברים נאמרו ע"י חכמי יבנה או הנשיא רבן שמעון בן גמליאל מחכמי אושא.[16] גם אם נניח שהדברים נאמרו ע"י רבן גמליאל דיבנה, שתיקת כל שאר חכמי יבנה הגדולים והמובהקים מכל התייחסות לתענית תשעה באב, דורשת הסבר. הכיצד אין במקורות הספרותיים מתקופה זו, ואין במקורות מאוחרים יותר, כל יחוס של אמירה על תשעה באב דיניו ומנהגיו לחכמי יבנה? כנראה שהתשובה לכך קשורה בהתמקדותם בשיקום החיים הדתיים והלאומיים לאחר החורבן, ולא בהנצחת העבר. יש לזכור שהם התמודדו עם התחושה העמוקה של הסתר פנים וניתוק הקשר בין עם ישראל לקב"ה, וקצה של ברית סיני כדברי בעל חזון עזרא:

מוטב היה לנו שלא לבוא לעולם מאשר לבוא ולחיות ברשעה ולהתייסר ולא לדעת על שום מה.[17]

חכמי יבנה, התמודדו גם עם התערערות האמונה בעם באפשרות של קיום חיים יהודיים שלמים בהעדר מקדש.[18] בתחושת החידלון והיאוש לנוכח התעצמות האימפריה הרומית במזרח, והפיכתה של א"י מפרובינציה „יודיאה" לקיסרית רגילה,[19] חורבן הישובים, ההרג וההרס הרב, נישול היהודים מאדמתם והפיכתם לאריסים על אדמתם, התבססותו של הישוב הנכרי בארץ,[20] ושאיפות משיחיות שהתבטאו ברצונם של החוגים הקנאים למרוד ברומאים ולכונן מחדש את בית המקדש.[21] חכמי יבנה שיקמו את החיים הדתיים של האומה, הם לימדו את העם שיש להשלים עם מציאות החורבן כגזירה משמים שאין לפרשה כהפרת הברית בין הקב"ה לעם ישראל אלא כשלב מזכך לקראת הגאולה השלמה. הם הדריכו את

15 מלטער, תענית, 144.

16 ראה: א' אופנהיימר, „שיקום היישוב היהודי בגליל," בתוך: צ' ברס ואחרים, עורכים, ארץ ישראל מחורבן בית שני ועד הכיבוש המוסלמי (שני כרכים: ירושלים: יד בן צבי, תשמ"ב) א:80-84 (להלן, בתוך: ברס, ארץ ישראל): ראה: תבורי, מועדי ישראל, 403.

17 חזון עזרא ד(ב), יב, כב-כה: חזון ברוך א ג, א-ט: איכה רבה, פתיחתא כא ופתיחתא כט: ראה: י' בער, ישראל בעמים (ירושלים: מוסד ביאליק, תשט"ו) 19. N. Walter, "Tempelzerstorung und synoptische Apokalypse," *ZNW* 57 (1966) 38–49.

18 ראה: תוספתא סוטה טו יא (מהדורת ליברמן 243): בבלי בבא בתרא ס ע"ב.

19 ראה: מ' שטרן, „המשטר הרומי בפרובינציה ,יודיאה'," בתוך: ברס, ארץ ישראל, א:1-17.

20 ראה: ג' אלון, תולדות היהודים בארץ ישראל בתקופת המשנה והתלמוד (שני כרכים: תל אביב: הוצאת הקיבוץ המאוחד, תש"י, תשי"ז) א:36-39, 80-91 (להלן, אלון, תולדות).

21 ראה: B. Salomonsen, "Some remarks on the Zealots with special regard to the term 'Qanaim' in the Rabbinic Literature," *NTS* 12 (1965/6) 164–176: H. P. Kingdom, "The Origin of the Zealots," *NTS* 19 (1972/3) 74–81: M. Smith, "Zealots and Sicarii, Their Origins and Relation," *HTR* 64 (1971).

בספרות התנאית הוזכרו דיני היום והלכותיו. אך התמיהה הגדולה היא הכיצד כמעט כל ההלכות נישנו בסתם ללא ציון אומרם?! במיוחד התמיהה היא על חכמי יבנה שהיו עדים לחורבן, אין מהם כל אזכור או התייחסות לקיומו של תשעה באב ולא מימרא, או דבר הלכה על אופי היום והלכותיו. התייחסות ישירה לתענית תשעה באב, האחת והיחידה, שרדה בתלמוד הבבלי בסוף מסכת תענית, אך מחמת ריבוי הגרסאות לא ניתן לזהות את בעלי המימרא. אנו נציין את הטקסט התלמודי לפי הנוסח שבמהד׳ מלטער:[11]

> רבן גמליאל אומר כל האוכל ושותה בתשעה באב כאלו אכל ושתה ביום הכפורים רבי עקיבא אומר כל העושה מלאכה בתשעה באב אינו רואה סימן ברכה לעולם.[12]

לפי נוסח זה, האמירות הללו מיוחסות לחכמי יבנה רבן גמליאל דיבנה ורבי עקיבא שהיה אז מצעירי החכמים, ומתלמידי זקני חכמי יבנה רבי אליעזר ורבי יהושוע,[13] וכפי שציין ש׳ ספראי:

> כמעט בכל המסורות שבספרות התנאית שנשתמרו בהן זכר מעשים רבים מן המאבקים הציבוריים רוחניים שנתלוו להתכוננותו של המרכז ביבנה ולהתגבשותה של ההלכה וקווי המחשבה של היצירה התנאית נזכר שמו ונתייחד מקומו של רבי עקיבא.[14]

אולם קשה לדעת כאן מהו הנוסח העיקרי, כי קיימים הבדלים בשמות החכמים בין עדי הנוסח השונים, כפי שמציין מלטער, בהערותיו למהדורתו המדעית:

> בכת״י אוכספורד מס׳ 366 (המסומן א): רבן גמליאל אומר...ר״ע אומר
>
> בכת״י מינכן מס׳ 141, 140 (המסומן ב): רבן [שמעון בן] גמליאל אומר...ר״ע אומר
>
> בקטעי כת״י מביהמ״ד לרבנים שבניו יורק (המסומן ה): [ותניא] רבן גמליאל אומר...ר״ע אומר
>
> בכת״י מינכן 95 (המסומן מ): [תניא] רבן [שמעון בן] גמליאל אומר...
> וכל העושה בו מלאכה (וליתא ר״ע).

אלא מסתמך על אפשטיין שהוכיח שתשעה באב היה מועד של קורבן עצים ראה: י׳ שחר, „חורבן הבית בתפיסתו של רבי עקיבה," ציון, סח (תשס״ג) 155–157. אולם גם אפשטיין עצמו סייג את הדברים רק למקריבי הקורבן ולא לכל העם ראה י״נ אפשטיין, „זמן עצי הכהנים," בתוך: ע״צ מלמד עורך, מחקרים בספרות התלמוד ובלשונות שמיות (ירושלים: הוצאת ספרים ע״ש י״ל מאגנס, תשמ״ד) 1–6 (להלן, אפשטיין, „זמן"): הנ״ל, מבוא לנוסח המשנה (שני כרכים: הוצאת ספרים ע״ש י״ל מאגנס, דביר, תשכ״ד) ב:1012, 1014 (להלן, אפשטיין, מבוא): מבואות לספרות התנאים (ירושלים-תל אביב: הוצאת ספרים ע״ש י״ל מאגנס, דביר, תשי״ז) 224. (להלן, אפשטיין, מבואות): שחר התעלם מראיותיו האחרות של אפשטיין לפיהן צמו בימי בית שני, כגון דבריו של רבי חנניה סגן הכהנים: „כל מחוייבי טבילות טובלין כדרכן בתשעה באב וביום הכיפורים אמר ר׳ חנניה סגן הכהנים כדיי הוא ביתו של אלהינו שיאבדו עליו הכהנים טבילה אחת" (ירושלמי ביצה ב ב, סא ע״א ובמקבילות), וכן מהמשנה ראש השנה א ג, לפיה בזמן המקדש השליחים יצאו על חודש אב ,מפני התענית׳ (ראה שם, 399). לפיכך מתקבל הרושם שהתמיכה הבלתי מסוייגת והחד צדדית בדברי אפשטיין על קורבן העצים, תוך התעלמות מהמקורות האחרים שאפשטיין עצמו הביא כדי להוכיח שבימי בית שני התענו בתשעה באב, נועדו בעליל לשרת את התזה שביקש שחר להציג, שקביעת יום תשעה באב כיום צום לחורבן בית שני נקבעה בתקופה מאוחרת ע״י רבי עקיבא.

11 מסכת תענית (מהדורת מלטער; נוי יורק: בית מדרש לרבנים באמריקה, תר״ץ) (להלן, מלטער, תענית).

12 בבלי תענית ל ע״ב.

13 ש׳ ספראי, רבי עקיבא בן יוסף חייו ומשנתו (ירושלים: מוסד ביאליק, תשל״א) 13, 18 (להלן: ספראי, רבי עקיבא).

14 ספראי, רבי עקיבא, 19.

לפי המסורת התנאית, יום זה נקבע לתענית מיד לאחר חורבן בית ראשון, והיא רואה בדברי הנביא זכריה המזכיר את ,צום החמישי׳ (זכריה ח, יט), כמתייחס לתשעה באב. דיני התענית והלכותיה מוזכרים לראשונה בספרות התנאית. סקירה על תשעה באב בתקופת המשנה והתלמוד מצויה בספרו של תבורי,[2] אולם אין הוא מתייחס לגורמים והמגמות שעמדו מאחורי הלכות התנאים בקביעת עיצוב דפוסי התענית, על רקע תקופתם ובתי מדרשם, ואת זה בא המאמר שלפנינו, להשלים ולמלא.

כאמור, האזכור הראשון של „צום החמישי״ מופיע בספר זכריה במסגרת ציון ארבע תעניות כזכר לחורבן בית ראשון: „צום הרביעי וצום החמישי וצום השביעי וצום העשירי״ (שם). התנאים בספרי,[3] נחלקו מה מציינים תאריכים אלה. לדעתו של רבי שמעון בר יוחאי, התאריכים הם עפ״י סדר המאורעות שהתרחשו: צום הרביעי חל בחודש הרביעי (לניסן) שהוא חודש תמוז. צום זה נקבע לזכר הבקעת חומות ירושלים ע״י נבוכדנצר מלך בבל. הארוע מתואר בספר ירמיהו בציון התאריך „בתשיעי לחדש״ (ירמיהו נב, ו–ז), שבו נבקעו החומות. צום החמישי חל בחודש החמישי (לניסן), שהוא חודש אב. צום זה נקבע לזכר חורבן בית ראשון. לפי המתואר בספר מלכים זה היה בשביעי באב (מלכים ב כה, ח) ולפי ספר ירמיהו זה היה בעשירי באב (ירמיהו נב, יב). המדרש מיישב את הסתירה בכך שבשבעה בחודש הגויים נכנסו למקדש וחיללוהו עד תשעה בחודש, ועם חשיכה הציתוהו ונשרף בעשור לחודש.[4] המשנה מציינת שהחורבן היה בתשעה באב.[5] צום השביעי חל בחודש השביעי (לניסן) שהוא חודש תשרי. צום זה הוא לזכר הרצחו של גדליהו בן אחיקם שנאמר עליו בספרי הנביאים שהיה בחודש השביעי (מלכים ב כה, כה, ירמיהו מא, א), לפי מקורות תנאים התאריך היה בג׳ בתשרי,[6] לפי מסורות מאוחרות יותר הוא נהרג בראש השנה.[7] צום העשירי חל בחודש העשירי (לניסן) שהוא חודש טבת. לפי ספר יחזקאל (לג, כא) בחמישה לחודש הגיעה השמועה על חורבן הבית ליהודי בבל. יום השמועה נקבע ליום צום כיום השריפה עצמו. רבי עקיבא חולק על רבי שמעון בר יוחאי לגבי צום העשירי, לדעתו הכוונה לעשרה בטבת. ביום זה החל נבוכדנצר מלך בבל לצור על ירושלים. כך שלפי המסורת התנאית „צום החמישי״ שבנביא זכריה מציין את תשעה באב שנקבע לזכר חורבן בית ראשון. לפי המסורת התנאית גם חורבן בית שני היה בתשעה באב,[8] אולם לפי יוספוס החורבן היה בעשרה באב,[9] וקיימת מחלוקת אם התענו בימי בית שני על חורבן בית ראשון.[10]

2 י׳ תבורי, מועדי ישראל בתקופת המשנה והתלמוד (ירושלים: הוצאת ספרים ע״ש י״ל מאגנס, תשנ״ה) 396–403 (להלן: תבורי, מועדי ישראל).

3 ספרי דברים, פסקה לא (מהדורת פינקלשטיין; ברלין: ת״ש [ד״צ ניו יורק: בית המדרש לרבנים באמריקה, תשכ״ט]) 50–51.

4 סדר עולם רבה (מהדורת ד״ב רטנר; ירושלים: מכון טל אורות, תשמ״ח) פרק כז (להלן, סדר עולם רבה); ראה גם: ח׳ מילקובסקי, „תאריך חורבן הבית הראשון על פי ,סדר עולם׳ התוספתא והבבלי – עיונים בהתפתחותה של מסורת,״ תרביץ סד (תשנ״ג) 487–500; תבורי, מועדי ישראל, 397–398.

5 משנה תענית ד ז.

6 סדר עולם רבה, פרק כז; תוספתא סוטה ו י (מהדורת ליברמן, 180); ספרי דברים, פסקה לא, (מהדורת פינקלשטיין, 50).

7 ראה: תבורי, מועדי ישראל, 397 הערה 25.

8 משנה תענית ד ז.

9 יוסף בן מתתיהו, תולדות מלחמת היהודים עם הרומאים, ו, ה.

10 ראה: תבורי, מועדי ישראל, 398–401. לאחרונה חזר ודן בנושא י׳ שחר שביקש להכריע ולקבוע שבזמן בית שני לא התענו בתשעה באב, אולם דבריו אינם משכנעים משום שאין הוא מציג עדויות ספרותיות חדשות

הבדלי הגישות בין חכמי יבנה לוד והגליל ליום תשעה באב והשתקפותם בדיני היום

דב הרמן
אוניברסיטת בר־אילן

The Different Approaches of the Rabbis in Yavneh, Lod, and Galilee regarding the Ninth of Av as Reflected in the Laws of the Day

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It is doubtful whether the observance of the Ninth of Av was formulated in the Second Temple period, or only after the destruction of the Second Temple. Laws pertaining to the day were copied from those governing the public fast days, to which were added the family mourning laws, to impart a dimension of personal grief to the Destruction. The early Tannaitic laws are more strict than those enacted by the later *tannaim*, and hardly any *halakhot* on this subject were pronounced by the Rabbis of Yavneh. Different orientations regarding the laws of the Ninth of Av can be discerned in the Usha generation. The Rabbis of Lod who studied in Yavneh, the place of residence of the priests who came from Jerusalem, exhibit a clear tendency towards strictness. The outstanding sage among this group was Rabbi Judah bar Ilai, who was stringent regarding the laws of this day. Rabban Simeon ben Gamaliel, in contrast, is noted for his lenient approach, as were the *Nesi'im* who succeeded him. These *tannaim* apparently feared that giving serious expression to mourning was liable to arouse messianic agitation and aspirations for freedom. An intermediate position was held by Rabbi Meir, Rabbi Akiva's leading pupil, whose views initially coincided with those of Rabban Simeon ben Gamaliel, but who later became one of the leading supporters of the Bar Kokhba rebellion. This middle position reflects the complex position in which Rabbi Akiva found himself, and which he absorbed and expressed in such intermediate views.

תשעה באב הוא יום שלפי המסורת התנאית ארעו בו חמשה דברים:

נגזר על אבותינו שלא יכנסו לארץ וחרב הבית בראשונה ובשניה ונלכדה בתר ונחרשה העיר.[1]

1 משנה תענית ד ז.

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